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ABSTRACT

During the past decade, community-serving organizations have encountered increasing pressure to implement comprehensive screening of program staff to reduce the risks inherent in working with vulnerable populations, such as young children. This screening "tool kit" suggests a process of staff screening based on the requirements of the position, the nature of the contact with clients, and legal limitations on the use of screening tools. The book includes chapters on: (1) legal aspects of screening; (2) position descriptions; (3) recruitment and applications; (4) interviews; and (5) reference and record checks. Included are sample position descriptions, applications, and interview questions. A list of State Child Protective Agencies and State Criminal History Repositories is provided, as well as references to relevant case law. Contains a list of resources and a 16-item bibliography. (SW)

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Staff Screening Tool Kit

Keeping the bad apples out of your organization

John Patterson

with Charles Tremper and Pam Rypkema

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Nonprofit Risk Management Center

The mission of the Nonprofit Risk Management Center is to meet the risk management and insurance needs of community-serving organizations through research, education, and advocacy. Services include workshops; risk management review of an organization's policies and procedures; analysis of legal issues for policy development and litigation; creation of publications and videos; staff training in risk-reducing procedures; consultation regarding sponsorship of a group insurance program; and revision of employment practices.

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Introduction

Whether operating with all paid staff, all volunteers or a combination of both, every community-serving organization must attempt to prevent staff from harming the people they serve or causing other damage to the community, the organization or themselves. Screening is part of a full risk management strategy for meeting that obligation.

During the past decade, community-serving organizations have encountered increasing pressure to implement comprehensive screening of the individuals who staff their programs. In some cases, the screening requirements and proposals are well-intentioned attempts to address complex problems with over-simplified and sometimes inappropriate solutions. Our purpose in this *Tool Kit* is to provide you with a basis for deciding what types of screening you should do and which requirements you should support.

The drive for more thorough screening is strongest for community-serving organizations and public agencies that serve *vulnerable* populations—children, elders, and individuals with disabilities. Even organizations that do not serve vulnerable populations may need to screen staff who handle funds, drive vehicles or serve in other positions that pose particular risks.

The Nonprofit Risk Management Center has developed this *Screening Tool Kit* in response to these needs. The *Tool Kit* suggests a process of staff screening based on the requirements of the position, the nature of the contact with service recipients, and legal limitations on the use of screening tools.

For purposes of this *Tool Kit*, screening consists of the steps you can take prior to selecting an individual to serve in your organization. Some organizations and publications use the term “screening” much more broadly to include all types of measures for reducing staff-related risks. For guidance on those additional strategies, the Nonprofit Risk Management Center offers *No Surprises: Controlling Risks in Volunteer Programs* and continues to publish additional resources on abuse prevention and other topics. The Center also provides consultation and training on various aspects of risk management.

SCREENING OBJECTIVES

The broad purpose of screening is to help you select the best applicants for available positions in your organization. Screening does not constitute the entire selection process, however. Thus, the specific purpose of screening is to

Only the Beginning

Although the focus of this publication is the screening process, we cannot stress enough that screening alone cannot adequately control all staff-related risks. Screening is just the beginning of an ongoing process that may need to include selection, placement, training, supervision, monitoring, and other measures designed to control wrongful or careless actions.

identify individuals who have identifiable characteristics that increase the risk of placing them in particular positions. There are several corollaries to this objective.

1. To identify individuals who would create an unacceptable risk if placed in certain situations.
2. To prevent the inappropriate placement of individuals in your organization.
3. To properly exclude dangerous individuals.
4. To properly exclude individuals who would be considered too risky for a particular position.

Although screening cannot eliminate all of the "bad apples"—a term we use for individuals who present an unacceptable risk—proper screening can reduce the likelihood that you inadvertently select those individuals to join your staff.

"STAFF"

Whenever the term *staff* is used in this **Tool Kit** it includes paid and volunteer positions. Otherwise, the term *paid staff, employee or volunteer* is used.

The missions of some organizations may not allow the exclusion of individuals who have characteristics that may increase the risk, for example, programs that are staffed by ex-offenders for youths at high risk of becoming delinquents, or church-based programs that stress redemption and forgiveness. Screening in these organizations at least identifies the risks and

provides a basis for managing the risks through strategies other than exclusion. The guidance in this **Tool Kit** is based upon the evolving legal duty to screen applicants, regardless of an organization's redemptive mission.

Inherent in our approach is identification of the specific risks for which screening is to be performed. The screening process should go beyond the obvious and address three specific concerns. For this position:

- Does the applicant represent an unacceptable risk to the members of the community this organization serves?
- Does the applicant represent an unacceptable risk to the organization?
- Does the specified position pose an unacceptable risk to the applicant?

Focusing on these items reduces the potential for the screening process to be misused as a way of excluding people who do not fit some standard mold but who are not dangerous. This **Tool Kit** suggests a screening process that addresses the identification of unacceptable risks without losing sight of either goal of selecting the best persons for the organization or respecting the rights of applicants.

Risks to Service Recipients

Community-serving organizations are intended to perform public good. Recruiting staff who pose an unacceptable risk of harming the beneficiaries of an organization's services negates that intent. Organizations, therefore, must develop policies and procedures designed to minimize the risks that staff pose for service recipients.

There are at least four kinds of risk that a staff member may pose to an organization's clientele.

- **Physical harm** - including physical assault; sexual assault; child abuse; injuries caused by misuse of vehicles or other machines; and exercise of poor judgment leading to injury or death.
- **Emotional harm** - including sexual harassment; name calling; racial, gender or religious discrimination; and denigration due to disabilities.
- **Theft of, or damage to, property** - including use of scams to take money from unsuspecting service recipients (often in conjunction with programs for the elderly); embezzlement and misuse of organizational funds; vehicle collisions; and other damages from recklessness or lack of respect for property.
- **Violations of privacy** - including misuse of confidential information; gossip; discussing clients with other service recipients or staff; and unauthorized distribution of mailing lists.

The concept of personal harm—either physical or emotional—that staff may inflict on a service recipient is fairly straightforward. You should not, however, discount the harm that staff could cause by other means, such as theft or misuse of confidential information.

Risks to the Organization

Just as a staff member may pose a threat to service recipients, he or she may also pose a risk to the physical and emotional safety of other staff. Drug abuse and physical assaults pose serious threats to the organization. Harassment and intimidation, too, can cause enormous damage to other staff and the organization. There are also specific risks to organizational assets through embezzlement, insurance fraud, theft and misappropriation of funds, for which applicants may need to be screened.

The staff screening process may be the most significant risk management technique for preserving the intangible, but arguably most important, organizational asset—*good will*—without which the ability of the organization to raise money, receive referrals, and fulfill its mission is severely impaired.

Consequences

If you become aware that someone has committed theft or embezzlement in the past and still select that person for a financial position, your organization's fidelity bond may not cover losses caused by that person's actions.

Risks to Applicants

Some positions have inherent physical risks for which applicants need to be screened. For example, volunteer leaders for a fifty mile backpacking trip with inner-city youths need the physical stamina to be able to complete the trip without having a heart attack. Obviously, persons selected for these positions should not be on doctors' orders to have limited exercise.

Staff assigned to crisis hotlines or counseling programs may be at risk of having their own emotional stability affected by the stress often present in such positions. A mentally unstable person or someone with unresolved victimization ordinarily should

not be selected for placements of this nature. Another kind of risk may be posed by operating certain kinds of machinery—a person with poor hand-eye coordination would be a poor candidate for operating power tools and other potentially dangerous equipment.

TAILORING THE SCREENING PROCESS TO ADDRESS RISK FACTORS

There is no standard screening process applicable to all staff positions. The screening process used should be based on the specific requirements of the position and the specific risks associated with that position. The chart on the next page provides a rough assessment of the sensitiveness of several kinds of staff positions and the relative importance of each screening element.

In the chart, the rows represent specific responsibilities that may be listed in a position description; the columns are screening tools as discussed in subsequent chapters of this *Tool Kit*. The larger the symbol in the box formed by the intersection of a row and column, the more important it is to use that particular tool for screening applicants for positions that include the responsibilities specified in the left-hand column. The chart is merely a general guide. Whether a tool is advisable depends on the details of the specific position.

As the chart indicates, a complete screening process should begin with position descriptions, completed applications, and initial interviews. These three elements should be considered the cornerstones for screening applicants for every sensitive position. Beyond these three elements, the organization should construct its screening process based upon the nature of the position, the potential risks associated with the position, and the costs associated with the screening procedure.

Most human services positions can be ranked by "intensiveness." The Minnesota Department of Human Services offers the criteria in the box below for assessing the "intensiveness" of a position.

"Intensiveness" Factors

- Solitary time with client (degree it is unsupervised)
- Exclusivity of relationship ("dependence" involved)
- Amount of time relationship involves (frequency of contact)
- Length of time the commitment will last (duration of relationship)
- Level of client vulnerability

General rule: The thoroughness of the screening process should increase with the frequency and intimacy of the contact required by the position.

SCREENING LEGALLY

As discussed in Chapters 2 and 9, the screening process is fraught with legal perils.

Relationship of Position Requirements to Screening Elements

Position Requirements	Position Description	Application	Orientation Interview	In-Depth Interview	Reference Checks	Motor Vehicle Records Check	Criminal History Records Check	Psychological Tests	Medical Tests	Home Visit
Unsupervised contact with vulnerable client	✕	✕	✕	✕	✕	✕	✕	✕	✕	✕
Access to confidential client information	✕	✕	✕	✕	✕	✕	✕	✕	✕	✕
Transportation of vulnerable clients	✕	✕	✕	✕	✕	✕	✕	✕	✕	✕
Handling organization's or client's funds	✕	✕	✕	✕	✕	✕	✕	✕	✕	✕
Long term contact with vulnerable client in live-in situation	✕	✕	✕	✕	✕	✕	✕	✕	✕	✕
Extreme physical exertion in a remote setting with children	✕	✕	✕	✕	✕	✕	✕	✕	✕	✕
Visits to clients' homes	✕	✕	✕	✕	✕	✕	✕	✕	✕	✕
Supervised client contact in groups, public setting	✕	✕	✕	✕	✕	✕	✕	✕	✕	✕
Helping clients change clothes, bathe, or with other personal activities	✕	✕	✕	✕	✕	✕	✕	✕	✕	✕
Coaching sports in which physical contact between adult and child is routine	✕	✕	✕	✕	✕	✕	✕	✕	✕	✕
Delivery of meals to clients' homes	✕	✕	✕	✕	✕	✕	✕	✕	✕	✕

KEY: The bigger the ✕ the more important the element in the screening process for that kind of position.

Selecting an unsuitable staff member, or violating an applicant's rights, can lead to liability.

The legal chapters address how the legal system defines the liability for screening and placement of staff. They are relevant to, and intertwined with, each screening tool addressed in the book. An understanding of these concepts will enable you to effectively review your existing screening process and to implement new screening policies and procedures that conform to the law.

Requirements for each position must be justifiable and not used as an excuse to discriminate against individuals who differ from the organization's norm.

Focusing on ability to perform essential functions rather than presence or absence of particular conditions will help you stay within the law. For example, thinking through the screening process may help you recognize how a position could be modified to accommodate a person with a disability.

Strategically, it is better to understand the legal framework before a claim arises. Planning provides the following advantages.

- Permits exploration of the boundaries of acceptable conduct.
- Provides a basis for evaluating the level of screening that is required.
- Gives your organization an opportunity to create "reasonable" policies and procedures that will conform to the law.
- Allows time to consult with an attorney or other specialist.
- Helps staff follow the law when handling unsuitable applicants.

When an injured party begins scrutinizing your conduct, it is too late to conform to the applicable legal requirements.

FINDING WHAT YOU NEED IN THE TOOL KIT

The *Tool Kit* provides up-to-date information to nonprofit and other community-serving organizations concerning staff recruitment, screening and selection processes. Each chapter is divided into two parts: the first discusses that section's element in the overall process; the second part, the *Tools* section, has sample forms and other useful information provided by several organizations. These samples show what other organizations are using and may include features that can be utilized by your organization. The last chapter provides questions to help you develop your own procedures.

The following are brief summaries of each chapter.

- ② **Screening adequately for the law** - the legal responsibility to screen applicants; constraints to screening applicants; differences between paid and volunteer positions; federal and state legislation relevant to applicant screening.
- ③ **Beginning the selection process: position descriptions** - legal and organizational benefits to having position descriptions for each staff position; and relationship of the responsibilities of the position to the screening process.
- ④ **Recruitment and applications** - application forms as an initial step in the screening

process; including screening requirements in "help wanted" notices; and guidelines for reviewing applications.

- ⑤ **Interviews** - face-to-face contacts to verify and expand upon the information contained in the application; specific questions for interviewers to ask; home visits as a specific kind of interview.
- ⑥ **Reference checks** - importance of checking references from past employers and volunteer placements; specific questions suggested for use in reference checks.
- ⑦ **Record checks** - using criminal history, child abuse, driving and credit bureau records; deciding what records to check; developing procedures for checking records; and evaluating information received from these records.
- ⑧ **Other screening techniques** - overview of drug and alcohol screening, psychological testing, and electro-mechanical screening devices.
- ⑨ **Even bad apples have rights** - avoiding liability for allegations of discrimination, defamation and invasion of privacy when turning down applicants.
- ⑩ **Using this Tool Kit** - designed to help you create the tools your organization needs to implement its screening process. Your response to the series of questions posed in the chapter will help you to design the forms and to develop the protocol your organization will use to screen its applicants for staff positions.



Screening adequately for the law

Incidents of abuse, injury, or theft not only harm the victims, but often result in costly legal fees, public outrage, and loss of donated time and money. Similarly, improper screening techniques can infringe an applicant's rights and lead to lawsuits. It is important to understand how the legal system defines the liability for screening and placement of staff, and to plan accordingly.

Unfortunately, the law offers very few clear "do's" and "don'ts" to guide the screening process. Moreover, the legal standards involve competing policies, and a sometimes complex analysis. The discussion in this chapter, as well as the list of cases at the end of the chapter, can help you to sort out the confusion.

To summarize, screening is subject to two general sets of legal rules. One pertains to your responsibility for screening thoroughly enough. The other pertains to the rights of individuals being screened. The first set of these rules is covered in this chapter and the second set is discussed in Chapter 9, "Even bad apples have rights."

From time to time throughout this chapter, we will refer to the following imaginary situation to illustrate legal points.

LifeSmyles, a nonprofit organization, offers free lawn care and housecleaning services to the elderly in a metropolitan area. It depends upon donated time, money, and resources to continue its community work.

Luke, an athletic, clean-cut 35-year-old, wanted to volunteer for LifeSmyles. At that time, LifeSmyles' screening consisted of an application, interview, and reference check process. Luke's application showed addresses in three different cities over the last three years. It also disclosed that he was convicted of disorderly conduct and assault fifteen years ago.

In the interview, Luke explained that he was in a wild fraternity in college, and that he had since matured. He also explained that he was a consultant by trade, and that his business necessitated frequent moves. When asked where he wanted to volunteer, he indicated a desire to clean houses in Bella Vista, a Spanish speaking neighborhood in the area. Luke did not, and does not, speak Spanish, and the neighborhood was quite some distance from his home.

The interviewer wrote that Luke appeared to be "a strong silent type" and that Luke was opinionated about some issues. The interviewer also noted that he shared the applicant's love of hunting, and that Luke seemed like a "regular guy." The interviewer did not check Luke's references because of the expense of several long distance phone calls.

After Luke was assigned to her home, an elderly Peruvian woman in Bella Vista, named Mrs. Torres, was found beaten to death. The police investigation found that Luke actively participated in an anti-immigration group, and used his volunteer position to harass foreign born residents in Bella Vista. A jury convicted him for the murder of Mrs. Torres.

From the criminal trial, the elderly woman's family was shocked to learn that Luke's college "fraternity" was called the Ku Klux Klan; that he has been deeply involved in an anti-immigration movement since college; that one of Luke's references was an activist who had been in prison for an immigration-related riot when Luke was applying for the position; and that Luke moved from city to city to avoid arrest. They hire an attorney and sue LifeSmyles, seeking \$1,000,000 in compensatory damages and \$5,000,000 in punitive damages.

Is LifeSmyles liable? One disputed issue at trial will be whether LifeSmyles adequately screened Luke's background or was negligent in accepting Luke for its home visitation service. The following discussion is designed to help you determine whether LifeSmyles was negligent when screening Luke for his volunteer position.

"NEGLIGENCE" AND REASONABLE CONDUCT

Claims that arise from inadequate screening generally are based on some theory of "negligence." Under the law, an action (or inaction) is "negligent" if a reasonable person would not have acted the same way. In other words, the degree of care, known as the "standard of care," is defined by reasonableness.

While no screening process can predict with 100% accuracy, it is still "reasonable" to try. Sometimes the boundaries of "reasonable" conduct are well defined. Statutes and/or regulations may advocate, or require, the use of certain screening tools. Some states have a central registry of sexual abuse offenders, and require agencies working with children to check the registry prior to hire.

States may issue specific licenses, *e.g.*, to automobile drivers or child care workers, that define a necessary level of competence to engage in an activity. If the state determines that specific characteristics will disqualify an applicant for a position, it is "reasonable" to screen out every applicant with those characteristics.

A Lawyer's Role

For questions about your organization's specific circumstances or laws in your state, this **Tool Kit** cannot substitute for a lawyer's guidance.

Certain contracts may define the screening tools that are "reasonable" to use. Construction, insurance, or public grant agreements may necessitate conduct that protects the interest of the contracting parties.

If you fail to use the suggested or required screening device, your conduct is likely to be found to be "unreasonable." For example, a service recipient injured by your volunteer's reckless driving may sue if the insurance contract required a driving record check for each driver, and you failed to request a check of that volunteer's driving record. The injured service recipient will assert that the insurer, with expertise in passenger safety and an incentive to minimize the likelihood of a claim

Words Lawyers Throw Around

plaintiff - a person or entity that alleges an injury in court, and seeks compensation for such injury.

defendant - a person or entity that allegedly caused an injury, and is brought into court to defend its conduct.

common law - a body of law that derives its authority from usage, custom, and tradition; certain principles that have evolved over time in judicial opinions.

negligence - an action, or inaction, that is unreasonable under the circumstances and causes injury; conduct that does not meet the appropriate standard of care.

standard of care - the degree of care that a reasonable person should exercise in specific circumstances; the failure to meet the standard of care results in negligence.

"reasonable person" - a fictional character who always acts prudently, carefully, and reasonably, and who sets the standard of care.

notice - knowledge of a fact, or state of affairs, that would naturally lead a prudent person to inquire further.

punitive damages - a financial award generally imposed to punish the defendant for malicious and/or reckless conduct, though the actual definition varies from state to state.

privacy - each person's right to be left alone, and free from unwarranted publicity.



Take Note!!

under the policy, required a reasonable screening tool to avoid such injury, and that it was unreasonable to trust the vehicle to someone without undergoing such screening.

Not everything is covered by statutes, regulations, licenses, or contracts. For most situations, the law does not give a clear description, or checklist, of how a "reasonable person" investigates staff and volunteers. Absent an applicable statute, your organization has a legal duty to take reasonable steps to protect others from harm. Careful selection of staff is the first step, and the growing trend is toward a more sophisticated investigation of the applicant's background and qualifications.

Duties may change. Each state varies the negligence concept, sometimes adding immunity from or defenses to a lawsuit if certain steps are followed. The law is constantly evolving, both through legislative enactment and judicial opinions, and you must change with it.

The "reasonable person" standard that imposes liability has its limits. The negligence theories are limited by foreseeability and control. In other words, could you have anticipated and avoided the injury that occurred?

CONTROL: ABILITY TO TAKE ACTION TO AVOID THE INJURY

The courts understand that your organization cannot control everything, and they do not require you to do so. To illustrate, a Sunday school member was injured at a

camp in *Cottam v. First Baptist Church of Boulder*. A Sunday school class, unaffiliated with the camp, wanted a class project and it selected the task of building a bridge from a projects list compiled by the camp. The plaintiff, a member of the Sunday school class, volunteered to help with the project for no wage or compensation. A tree fell on the volunteer when the group cut it down for the bridge. The volunteer sued the camp for damages.

The court defined "duty" by reasonableness, as determined by balancing the foreseeable risks against the burden of guarding against injury. In this case, the court held that the camp had no means of guarding against injury. The camp did not select the project, personnel, or manner of performance. The camp offered no payment for construction of the bridge. It had no power to supervise the project or terminate individuals who presented risk. Thus, the court held that the camp did not owe a duty to protect the volunteer from harm, and it was not liable.

Even within the same organization, different divisions may have different duties. In a screening case, *Infant C. v. Boy Scouts of America*, a troop selected a Scoutmaster who had been convicted of sexual assault while acting as a Scoutmaster for another troop. The new Scoutmaster initiated a sexual relationship with a Scout in the troop, and the Scout sued both the local and the national Boy Scout organizations.

The national Boy Scouts organization was found not to be liable because the local troop conducted the bulk of the hiring process. (However, the jury did hold the local council liable, and awarded damages.) The jury found, and the court affirmed, that the national organization had no control over the selection of the Scoutmaster, that it had acted reasonably, and that it was not liable for the injuries. The local troop had sent the application form to the national office to be checked against a confidential list of "unfit" persons, but it was not mailed until the alleged injury had already occurred. Moreover, the previous troop had inadvertently failed to notify the national office of the previous convictions.

In our hypothetical, LifeSmyles interviewed, accepted, and placed Luke in a private home where he would be alone with an elderly, vulnerable person. It selected the activity to be performed, and the manner of performance. It had the power to supervise and control Luke's activities. Accordingly, it had a legal duty to protect Mrs. Torres from injury. Could it satisfy that duty without screening its volunteers?

FORESEEABILITY: ANTICIPATING INJURY UNDER THE CIRCUMSTANCES

Once a duty to act "reasonably" is found, the touchstone for inadequate screening liability is *notice*. If you knew, or should have discovered, the existence of a dangerous condition that eventually causes an injury, you may be held liable.

Closing your eyes does not avoid notice of the facts. After an injury is alleged, courts look not only at what you knew, but also what you reasonably should have known. Did your organization know, or should it have known, that the applicant was unfit? Given all the facts, was it reasonable to permit the staff member or volunteer to act on your organization's behalf?

- Did you know that the staff member had his license suspended for drunk driving before you gave him the keys to the organization's van?
- Did you know of your treasurer's substance abuse problem before you let her collect funds and manage the books?
- Did you know that the volunteer was a violent member of the Aryan Nation when you paired him with an African-American child in a mentoring program?

In each of these cases, was critical information available to you that you did not obtain? A judge or jury would determine what reasonable people would have done in similar circumstances, and evaluate your conduct accordingly.

HOW MUCH DO YOU NEED TO KNOW?

While courts do not expect you to know everything, they do expect you to examine an applicant's suitability for the position—as defined by the position description. The likelihood and severity of the danger depends upon what you want the individual to do. An individual may only be "dangerous" because he/she is unsuitable for the position. A specific job description helps you to identify potential dangers and to focus your investigation.

How thorough does the investigation have to be? It depends. As discussed in Chapter 1, the greater the danger, the more extensive the investigation. The danger presented by applicants is enhanced when your service recipients are vulnerable and unable to protect themselves adequately.

Courts balance the danger against the availability and cost of the investigatory tools. However, they may conclude that if you cannot afford to screen adequately, you should not accept the risk at all. When certain dangers are so likely to result in an injury, or are so severe in their consequence, courts may conclude that you should have expended the resources to investigate thoroughly.

An application and personal interview process is relatively easy and inexpensive to use. From such a process, as discussed later in this book, you can gain insight into the stability, motivation, and level of commitment of the applicant. This knowledge may enable you to screen out unsuitable applicants. Thus, courts are likely to conclude that reasonable persons would use such an investigatory process.

If the position involves unsupervised contact with vulnerable individuals, or if the quick and inexpensive process raises concerns, the courts are likely to conclude that a reasonable person would have done much more. Certain circumstances may prompt the court's reasonable person to investigate the matter further.

Going back to our hypothetical, did LifeSmyles have notice? The application indicated frequent moves and assaultive behavior in college. These facts alone are not likely to render Luke to be unfit, but they are "red flags." Did LifeSmyles get all the facts? It asked for references, but failed to contact them. LifeSmyles, noting its tight budget and heavy dependence on

"Red Flags"

As used in this **Tool Kit**, "red flags" are items that would cause a reasonable person to question the suitability of the applicant for the position. Some "red flags" may be automatic disqualifiers; others signal the need for further investigation.

volunteers, asserts that its screening without the reference checks was sufficient.

LifeSmyles' argument is not likely to be persuasive where a vulnerable elderly woman is at risk. Luke's volunteer position gave him unsupervised access to her house. The grieving Torres family will tell the jury that, had LifeSmyles spent the \$2.00 or so to contact the incarcerated reference, it would have learned of Luke's anti-immigrant activities. The Torres family is then likely to tell the jury that Luke's anti-immigrant activities, coupled with a desire to commute to a neighborhood where he did not speak the language, would have prompted a "reasonable person" to investigate further.

With relatively little expense, LifeSmyles could have asked for the "fraternity's" name, and checked the chapter as a reference; spent less time discussing hunting and more time on Luke's other interests and activities; and scrutinized Luke's desire to work in Bella Vista.

With full knowledge of the facts, the family will assert that LifeSmyles never would have put Luke in a position to harm Mrs. Torres, and that Mrs. Torres would be alive today but for LifeSmyles' negligence.

Notice of negative information does not necessarily require rejection. No one is perfect, and you need to work with what you have. In fact, members of extremist groups, *e.g.*, The Aryan Nation, are free to believe and advocate radical ideas, and to associate with individuals who think the same way. Public entities, and to a lesser extent private entities, must not use mere ideas or beliefs to screen applicants out. *Conduct, not mere ideas, should be the basis for exclusion.*

Public vs. Private Entities

Governmental entities are bound by certain constitutional principles and laws that do not apply to private entities. Governmental entities may benefit from certain defenses and immunities, while private entities do not. At times, because of public funding or contractual obligations, the distinction between public and private entities is blurred.

Especially for volunteers willing to work free of charge, you may want to alter the job description for the individual or to place the individual in another position. You can supervise persons you have questions about, assign poor drivers to the premises, and deny spendthrifts access to your accounts. Because liability ultimately requires that the danger presented is the one that caused the injury, you may need to redefine the job description to eliminate any injury from the "danger" presented.

DEFINING "REASONABLE CONDUCT" AT TRIAL

If a case goes to trial, the court will examine your screening with the benefit of hindsight. When the injured party is looking back at your conduct, it is too late to screen the staff member.

The question that you will need to ask, should litigation arise, is "how will we prove that we acted reasonably?" Thinking about the answers to the following questions now, when you are creating your screening policies, will help you at any future trial.

- Did you set policies and procedures to ensure compliance with the law, any licensing procedures, and insurance or other contracts?

- Did you take the time to check, or did you accept all comers without thought or investigation?
- What investigatory tools did you use? Were the tools suitable for each position?
- Did additional concerns surface from your investigation, and did you take the time to assuage these concerns?
- Did someone try to warn you of the danger, and, if so, did you listen to them?
- If you had resources available to you, did you use them? If you needed additional resources to investigate, did you try to get them?
- Do you have the records to verify your procedures, and to show that those procedures were followed?

REAL LIFE EXAMPLES

Several cases are discussed below to illustrate the potential for screening liability. The case analysis focuses only on the screening process, not on the other risk management tools that could have eliminated (or minimized) the danger. While not every case deals with a community-serving organization, the same general principles will apply. Additional case citations are found at the end of the chapter.

When reviewing each case summary, ask yourself why the court decided the case as it did. Then compare your organization's activities to those discussed in the case—does the case guide you to use any of the screening tools used in this book?

Legislative Determination of Reasonable Placement Ignored

A nursing home failed to obtain a state-required license in *Deerings West Nursing Center v. Scott*, and it was held liable. In *Deerings*, the home hired a bartender "sight unseen" over the telephone, to be a nurse. After he had been hired, the nurse completed an application, upon which he stated that he had the appropriate license, and that he had never been convicted of a crime. But the nurse was ineligible for a license. The state limited entry into the nursing profession, barring convicts, and the nurse had a lengthy criminal record.

An elderly woman came to the home to visit her brother, but arrived before visiting hours began. The nurse became agitated, hit her on the chin, slapped her, and pinned her on the floor. The woman sued for damages, and the jury gave her both compensatory and punitive damages. The court held that, had the home required the license, the licensing process would have uncovered the potential danger. It found that the injury to the elderly plaintiff could have been avoided if the home had merely followed the law. Accordingly, the court found that the jury's award of punitive damages was justified.

Does your organization hire staff "sight unseen?" Does your organization determine whether a license is required for an activity and, if so, does it get it?

Why Do Cases Seem Inconsistent?

Reading legal cases can be confusing. Each case presents different facts, and the importance of each fact may depend upon the judge, lawyers, and resources of the client. Moreover, even if you find a case that looks identical to your situation, courts of one state are not required to follow the law of other states. The end result is that case law sometimes appears to conflict and to lead to inconsistent results.

Does your organization have procedures in place to prevent acceptance of a forged, or fake, license?

Level of Risk Required a More Thorough Investigation

A security firm was held liable for negligently hiring a guard in *Welsh Manufacturing v. Pinkerton's*. The applicant sought a security guard position for the purposes of theft, and the security company failed to screen him out. A client contracted with Pinkerton's to protect a sizable quantity of gold. After the applicant had been employed for approximately six months, the client's plant had three incidents of theft within 45 days. The guard subsequently admitted his involvement.

The investigation process involved completion of an application form, a criminal background check, and reference recommendations. Pinkerton's failed to contact all of the provided references. With respect to the references contacted, Pinkerton's failed to scrutinize the applicant's honesty and trustworthiness. The guard's high school principal never mentioned the traits. A "good" rating for honesty by a former employer was undercut by the overall mediocrity of the evaluation, the absence of an affirmative desire to hire him again, and the fact that the previous position had not been one with similar temptations.

Given the value of the property subject to theft, and the importance of honesty to the job, the court found that Pinkerton's was obligated to conduct a more thorough investigation.

Does your organization take the time to investigate each requested source of information? If a trait is highly relevant to the job description, does your organization focus on the specific trait? With respect to honesty, does your organization ask if the applicant has been "bonded" and, if so, check the claims history on the applicable fidelity bond?

"Red Flags" Are Important, Especially for Position of Trust

An owner/operator of an apartment complex was found to be liable in *Ponticas v. K.M.S. Investments*. In *Ponticas*, the employer hired an apartment manager, not knowing that the manager had a criminal record. The owner had obtained an application from, and ran a credit check for, the manager. The staff interviewed the manager before an offer was made. The manager was entrusted with a passkey to enter each apartment, and he used it to enter a tenant's apartment, where he raped her.

The court held that the application process uncovered "red flags" and that the owner should have investigated further. The application indicated:

1. that the manager received a general (rather than honorable) discharge from the U.S. Army after an abnormally short tour of duty;
2. long periods of unemployment; and
3. a criminal history.

The court remarked that the decision to hire the manager was hurriedly made and, while it was not clear whether the criminal record could have been discovered, nobody even tried. Also, though the application asked for references, the owner and his staff

failed to contact the names provided. Had they done so, they would have learned that the "references" were the manager's mother and sister.

Does your organization contact references? Do you document each contact, e.g. date and time of call, name and position of reference, relationship to applicant, and substance of opinion?

Job Description Influences Obligation To Investigate

An employer was found not to be liable for hiring a person with a criminal record and a driver's license suspension in *Guillermo v. Brennan*. In *Guillermo*, an intoxicated employee, driving the employer's vehicle, caused an accident that killed a 12-year-old girl. The employer did not investigate the employee's criminal background, communicate with the employee's prior employers, or investigate the employee's driving record. The child's family argued that, had the employer done so, it would have learned of the employee's frequent job changes, driver's license suspension, and criminal history. Given this information, the child's family claimed that a reasonable employer would not have hired the employee.

The court disagreed. It found the criminal record to be irrelevant, both because it failed to correlate to the skills necessary to drive a car, and because a state statute prohibited discrimination against convicts. It also found no notice of the drinking problem because the license suspension related to an outstanding damage judgment, not intoxication or recklessness.

As for the sporadic work history, the court found that the employee was not unfit to install insulation, the employment at hand. The employer waited several months before trusting the employee with a car, during which time the employee proved himself to be a responsible and diligent employee, and the court found this conduct to be reasonable.

Do the laws in your state prevent you from using certain screening tools? If so, can you get the information from another source? Could your organization implement a training and probationary period?

Redundant or Unavailable Tools Need Not Be Pursued

The background investigation of an applicant was found to be adequate in *Big Brother/Big Sister of Metro Atlanta, Inc. v. Terrell*. In *Terrell*, the Big Brothers paired a boy with a volunteer who molested him. The Big Brothers' investigation process included completion of an application and a family history, contact with at least three references, an "extensive interview and assessment by a clinically trained case worker," and an interview with the membership committee.

The Court held this investigation to be reasonable and sufficient. It rejected the plaintiff's suggestion that the organization should have also had a credit check, psychological tests, or FBI report. The Court found the credit check to be irrelevant to the job description, and the other tools to be either unavailable or redundant.

If your organization cannot afford an "extensive interview" by a "clinically trained case worker," are there other tools that you can use without duplicating your efforts?

Reasonable Discretion Allowed in Using Tools

An employer was found not to be liable even though its personality test raised concerns in *Thatcher v. Brennan*. In *Thatcher*, a salesman physically assaulted a fellow motorist after a traffic dispute.

The salesman had taken a personality inventory test prior to his employment. The evaluation characterized the applicant as a person of "high aggression," immaturity, and volatility. The evaluator remarked that the profile significantly differed from most other sales candidates.

The victim asserted that the test put the employer on notice of the salesman's propensity for violence, and that it was negligent to hire him. The court disagreed. The court held that "aggression" is not synonymous with "violent," and that the employer did not have notice that an assault would occur.

How would the headlines read if this were a nonprofit volunteer at a camp for individuals with disabilities? Does your organization ensure that the information obtained by screening tools is analyzed properly? For the screening tools that you use, do you have criteria and procedures to guide you in the selection or rejection process?

CONCLUSION

In summary, the legal duty to screen depends on the specific circumstances and legal doctrines that vary from state to state. Failure to conduct a sufficient investigation may lead to liability, even if the wrongful conduct is illegal, immoral, or simply in flagrant violation of your own rules.

The screening methodology in this *Tool Kit* should be helpful in this regard. When reading about the tools in this book, think about how these legal theories may be used against your organization. Then think about how you can use the tools to prevent such claims.

Although it is outside the scope of the discussion in this book, it should be noted that the organization's obligations do not stop after the application has been accepted. When you learn of a potential danger (e.g., a drunk driving conviction or an abuse allegation) involving someone already on your staff, it may be negligent for your organization not to take further precautions.

CASE LAW

Beddia v. Goodin, 957 F.2d 254 (6th Cir. 1992) (music festival organization not liable because it had no duty to protect shuttle passengers while they were on another's property, and because it had no control over the shuttle service).

Big Brother/Big Sister of Metro Atlanta, Inc. v. Terrell, 359 S.E.2d 241 (Ga.App. 1987) (screening deemed sufficient; every available tool need not be used).

Christianson v. Educational Service, 501 N.W. 2d 281 (Neb. 1993) (employer is liable for physical harm to third persons resulting from the negligent selection of an employee).

Cottam v. First Baptist Church of Boulder, 756 F. Supp. 1433 (D. Colo. 1991) (liability for an injury requires an ability to control the situation, and to prevent harm).

Deerings West Nursing Center v. Scott, 787 S.W.2d 494 (Tex.App. 1990) (negligent to hire a nurse without obtaining the necessary license).

Diaconescu v. Hettler, 435 S.E. 2d 489 (Ga. App. 1993) (homeowners failed to investigate a homeless man that they asked to "watch" their home; found not to be liable to gunshot victim because the man never showed signs of violent or criminal behavior, the homeowners did not know that the man had access to firearms, and the man was not hired to be a "security guard").

Garcia v. Duffy, 492 So.2d 435 (Fla.App. 1986) (employer liable when employer knows, or should know, that an employee is predisposed to wrongful conduct, and permits an opportunity for the wrongful conduct to occur).

Guillermo v. Brennan, 691 F. Supp. 1151 (N.D. Ill. 1988) (screening tools need to be tailored to ensure fitness for the job at hand).

Infant C. v. Boy Scouts of America, Inc., 391 S.E.2d 322 (Va. 1990) (duty to screen applicants is not uniformly imposed on every division of an organization).

Kansas State Bank & Trust Co. v. Specialized Transp. Services, Inc., 819 P.2d 587 (Kan. 1991) (liable if knew or reasonably should have known of danger, need not foresee the specific injury).

Moses v. Diocese of Colorado, 863 P. 2d 310 (Colo. 1993), *cert. denied*, 114 S. Ct. 2153 (1994) (Church placed priest in a position that required frequent contact with others, and that induced reliance and trust; found liable when they failed to screen out priest when a psychological report indicated potential problems with depression, low self-esteem, and "sexual identification ambiguity.")

Peck v. Siau, 827 P.2d 1108 (Wash.App.), *cert. denied*, 838 P.2d 1142 (Wash. 1992) (school district conducted sufficient investigation by verifying teaching certificate and checking background).

Perkins v. Spivey, 911 F.2d 22 (8th Ar. 1990) (employers must hire and retain safe and competent employees).

Peters v. Ashtabula Metro. Housing Auth., 624 N.E. 2d 1088 (Ohio App. 1993) (20 year old criminal record was too remote in time to support a basis for liability).

Reader's Notes

Ponticas v. K.M.S. Investments, 331 N.W.2d 907 (Minn. 1983) (position of trust requires a more thorough investigation).

S.H. v. Utah, 865 P.2d 1363 (Utah 1993) (state immune from negligent hire lawsuit, even though it had been aware of previous incidents of sexual abuse).

Thatcher v. Brennan, 657 F. Supp. 6 (S.D. Miss. 1986), *aff'd*, 816 F. 2d 675 (5th Cir. 1987) (liability is not imposed merely for accepting a "volatile" person).

Welsh Mfg., Div. of Testron, Inc. v. Pinkerton's, 474 A.2d 436 (R.I. 1984) (central characteristics of the position should be the focus of the screening procedure).



Beginning the selection process: position descriptions

In *No Surprises: Controlling Risks in Volunteer Programs*, the Nonprofit Risk Management Center recommends having a position description for each staff position—paid and volunteer—as a powerful risk management tool. Other publications (see “Resources” section at back of book) stress the importance of a position description as a personnel management tool. This recommendation is reiterated and expanded here.

A written position description defines what the person is supposed to do and what the person is not supposed to do. The position description defines the qualifications for the position and provides the foundation for the screening process.

DUTIES AND LIMITATIONS

The duties and limitations stated in the position description should serve as a guide for the nature of the screening. For example, if the position description calls for the individual to handle funds, the organization has a legitimate interest in the person’s experience with handling money; financial difficulties the individual may have experienced; experiences the individual may have had handling someone else’s money; and any history of embezzlement or misappropriation of funds. Inquiring into these matters for another kind of position would be inappropriate and possibly unlawful.

If the position calls for working directly with service recipients, the areas of interest for screening may include how well the individual relates to others; indications of abusive behavior toward clientele or staff in other similar circumstances; and applicants’ ability to relate to individuals from different ethnic backgrounds.

The nature of the work with service recipients also has implications for the extensiveness of the screening process used. For example, if the only staff contact with clientele is while under direct supervision in a facility, the screening may be less exhaustive than if the position requires staff to visit clients alone in their homes.

These are just a few of the points established by the position description that help identify the screening criteria for applicants. They provide a legal basis for inquiry (see Chapter 2, “Screening adequately for the law”). Hence, the need for continuity between the position description and screening. In subsequent sections of the *Tool Kit*, we will

Position Descriptions

- ☒ Job title
- ☒ Purpose/Function
- ☒ Specific duties and responsibilities
- ☒ Qualifications and desired skills
- ☒ Supervisor
- ☒ Time commitment
- ☒ Training/Orientation provided
- ☒ Location where service is to be performed

examine the relationship of the position description to specific screening tools: applications, interviews, reference checks, record checks, and other screening techniques.

QUALIFICATIONS AND TRAINING

The position description should state the qualifications and training necessary to discharge the responsibilities of the assignment. Minimum qualifications should be justified by the work to be performed. To avoid legal problems, the criteria themselves

The position description defines the limits of the position. Screening, then, should attempt to exclude people who appear likely to violate those limits.

should be performance-based. Asking if an applicant can lift a 40-pound box is less likely to screen out someone inappropriately than asking if an applicant has a bad back.

If duties are going to be performed that have risk factors which can be reasonably anticipated, the position description should specify qualifications that will minimize the risk. For example, rather than specifying a medical degree for someone who is going to perform brain surgery, the position description should specify completion of a residency in neurosurgery.

Training is also an important aspect of risk management, albeit beyond the scope of this publication. The position description should specify any training the organization requires prior to assuming a position. The training may be a simple orientation, provided by the organization, explaining the organization's goals and giving limited guidance on proper procedures. The training may be more extensive, providing staff with specific position-related skill development. Describing it in the position description will help to eliminate individuals who would not complete the training.

Position description tools

1. Job Description, Family And Community Education & Support
2. Job Description for a Volunteer: A Sample, National Retired Teachers Association—American Association of Retired Persons

NOTE: The forms in this book are for illustrative purposes only. They are based on forms that have been used in the field. They provide “real life” examples, rather than a recommended practice.

The authoring organizations provided forms that they had designed for specific uses. The forms may not be appropriate, or complete, for other purposes or types of organizations. Copying the material may also be restricted by copyright laws.

JOB DESCRIPTION

Position: Child Aide

Reports to: Volunteer Manager

Purpose: The Child Aide program was designed to treat children age birth to 12 years who have been or are potential victims of abuse and/or neglect. While the primary focus is on treatment of the child, volunteer interaction with the parents and/or parent substitutes facilitates a family treatment approach. Primary emphasis with the young child is on increasing language and motor skills that may be delayed due to environmental factors. Older children are targeted for treatment and development of emotional growth with primary emphasis on building self-esteem and relationships of trust.

Examples of Duties Performed

1. Provide physical, emotional and intellectual stimulation to a child who may be developmentally delayed due to their environment.
2. Provide guidance and support to a child who has been or is a potential victim of abuse and neglect.
3. Be a good listener to verbal and non-verbal communications.
4. Engage in activities that provide new experiences for a child.
5. Develop a relationship of trust and continuity with a child that will enhance the development of a positive self concept.
6. Provide support and assist parents or parent substitutes in meeting the physical, emotional and educational needs of a child.

Expectations of a Child Aide Volunteer

1. A keen desire to help children and the ability to relate to them in a positive, patient, sensitive and non-judgmental manner.
2. Ability to empathize with abusive, neglectful parents and be accepting, non-judgmental and resourceful.
3. Attend all pre-placement training.
4. Commit one year to the program.
5. Commit to seeing the child on a weekly basis.
6. Work in cooperation with other professionals assigned to the case.
7. Maintain confidentiality regarding the child and family situation.
8. Participate regularly in in-service training sessions.
9. Communicate with the Volunteer Manager on a monthly basis.
10. Keep accurate records of time and activities.
11. Keep a journal for personal growth and satisfaction.

Benefits

1. Consistent direction, support, supervision and training by professional staff.
2. Personal growth and satisfaction.
3. Opportunity to gain skills and knowledge which may later be applied to paid work. Job references furnished upon request.
4. Opportunity to become familiar with the dynamics of child abuse and neglect and family dysfunction.
5. Exposure to a variety of people and environments and the opportunity to learn from both.

JOB DESCRIPTION FOR A VOLUNTEER: A SAMPLE

Position: Senior Citizen Communications Monitor and Program Aide

Objectives:

1. To provide monitoring for civilian patrols who communicate with the precinct civilian patrol desk by civilian band radio.
2. To provide support services for the crime prevention and community relations programs operated from precinct headquarters.

Major Responsibilities:

1. Answer, take messages, and communicate on telephone and civilian band radio.
2. Do general office work such as filing, typing forms, and operating office machines.
3. Serve as receptionist for the precinct community relations and crime prevention specialists.
4. Aid in the operation of selected police-community programs, such as—but not limited to—Operation Identification, bicycle registration, block watches, information bulletins (crime prevention) and the visual inspection program.
5. Disseminate information to senior citizens and assist them through referral.

Responsible To: Crime prevention specialist

Time Required: The minimum participation will be four hours, one day per week.

Qualifications: Possesses communication skills. Can do general office work and be taught to operate office machines. Is able to fill out police forms and reports. Is not incapacitated through poor sight or hearing, and has adequate diction and speaking ability to communicate over the telephone.



Recruitment and applications

Application forms are usually the initial source of information about candidates for staff positions. The application form needs to provide adequate information for use as the first step in the screening process. The following sections discuss the application solicitation process, suggest contents for the application form, and give guidance for reviewing applications.

OPPORTUNITIES FOR SELF-SCREENING

The information your organization includes in its solicitations for staff applications will influence the suitability of the applicants for your positions. Your solicitations should inform applicants about the nature of the available positions and required qualifications.

If appropriate, you should also indicate that applicants may be required to complete a background check, or other procedures, prior to placement. Letting applicants know about these requirements before they complete an application allows them to decide if the nature of the position is the kind of work they want to do. It also lets them know that their background will be examined for any adverse information relevant to the position for which they are applying.

Listing screening requirements in advertisements for applicants for positions in your organization can discourage applications from individuals who do not want to subject themselves to the screening process or who may have negative information they wish to keep concealed. Such self-screening saves an organization the time and expense involved with reviewing and screening unqualified applicants.

Some program administrators are concerned that instituting rigorous screening requirements will scare off otherwise excellent prospective applicants. This, unfortunately, is sometimes true, but the negative effects can be minimized. To counteract possible deterrence of screening requirements, applicants need to have the benefits of screening explained to them. Organizations should be prepared to explain the reason for each screening procedure and how the information will be used. Applicants need to know that procedures are set by organizational policies applied to everyone. If the screening requirements are derived from the requirements of the position, the loss of some volunteers may be an acceptable cost.

HELP WANTED

Volunteer drivers needed to transport senior citizens to and from health clinic one afternoon per week. Van provided. Must have clean driving record; complete defensive driving course and pass driving test. Will verify motor vehicle records. Call 555-9876 for application.

CRITICAL ITEMS FOR INITIAL SCREENING

A general application form that includes at least the following six elements provides a solid foundation for screening.

- **Identification** - The application needs to include items such as the applicant's name, social security number (if appropriate), and addresses for the past five years with dates of occupancy.
- **Qualifications** - The application should record information required to document the qualifications for the position. The kinds of information needed for this include academic achievement, training courses with dates of completion, and certificates and licenses (with their expiration dates).
- **Experience** - The application should ask the applicant to list relevant experience—both paid and volunteer; dates of service; description of duties; organization where service was provided; and name of immediate supervisor with address and telephone number to facilitate verification of the information.
- **Background and References** - If permitted, the application should ask for a listing of any *convictions* for criminal or serious motor vehicle violations. For volunteer positions, a question about arrest may be permitted. Also, the application should ask for at least three personal references of individuals not related to, but who have known the applicant for a period of time. In addition to name, address and telephone number, the nature of the relationship and the length of time known to the reference should be listed.
- **Waiver/Consent** - The application should include a statement indicating that the applicant certifies that the information provided is true and accurate. Further, the applicant authorizes the organization to verify the information included on the application and specifically waives any rights to confidentiality. The statement should specifically list the procedures that the applicant authorizes the organization to perform, e.g., criminal history record check, reference checks, employment verification, etc.
- **Signature and Date**



Take Note!!

The Law

As explained in Chapter 2, there are legal limitations on questions that may be asked of prospective **employees**. As a rule of thumb, items of information protected by equal employment opportunity laws—age (other than over the age of majority), gender, race, and religion—are irrelevant to most positions and should not be requested on the application form. Volunteer positions generally are not subject to the same legal protection as paid employment. Membership organizations may be permitted to have specific membership qualifications included on their application forms.

REVIEWING APPLICATIONS

The objective of screening applications for both paid and volunteer staff positions is to fill available positions with qualified individuals. In a way, the screening process is similar to fitting differently shaped pegs into holes with corresponding shapes. For most paid positions, you begin with a hole of a certain shape and try to find the peg that most closely fits into the hole. With volunteer positions, you may more often begin with an assortment of pegs and try to find holes into which the pegs will fit. In each case, the position description is the hole that determines the fit.

To carry this analogy further, the application is the first information you have about the shape of the peg. It can indicate in general terms whether there might be a fit between the peg and the hole, but additional information will be needed to decide the closeness of the fit.

The position description is the key to the fit. There must be a *thread of continuity* between the position description and screening of applications. Screening of the application should include careful consideration of the applicant's suitability for an available position.

There are several "red flags" that are relevant to applicants for almost any position. Their presence could be indicative of serious problems. If present, you will need to decide if the applicant is otherwise qualified and should be interviewed. During the interview, you should ask for an explanation of factors that cause concern.

- ***Have there been frequent, unexplained moves?*** Individuals who move from community to community without apparent explanation may be leaving a trail of debt, criminal activity, or child abuse.
- ***Are there gaps in employment?*** Precipitous changes in employment with unexplained gaps may indicate poor work habits, terminations, or employment not listed on the application for fear the employer would give a poor reference. Another explanation may be a period of incarceration or institutionalization.
- ***Are any criminal convictions or serious motor vehicle violations listed?*** Any convictions should be examined in the light of the requirements of the position for which the applicant is being considered. Certainly, if the position involves handling money, crimes such as forgery, robbery, and embezzlement are pertinent. If the position would not require use of an automobile, speeding tickets may not be germane. A series of tickets, however, may imply a lack of judgment or maturity needed for some positions.
- ***What avocational interests does the applicant have (including hobbies and community activities)?*** Involvement in age-appropriate hobbies and community activities suggest emotional maturity. Over-investment in children's activities—youth groups, sports, Sunday school teacher—to the exclusion of social activities with other adults may indicate an unhealthy compulsion to be around children.

Some organizations use a formal rating sheet to evaluate applications. They have a check-list with the qualifications for the position and may give a numerical rating to

Primary Screening Measure

First and foremost, you need to determine if the applicant has the basic qualifications for the position. After this has been determined, you can examine other factors.

each factor, for example, one point if it marginally meets the criteria, three points if the applicant fairly meets the criteria, and five points if the applicant meets the criteria in an outstanding fashion. The score is then totaled and only the top candidates are invited for interviews.

For applicants who clearly do not have qualifications you can use, you should thank them for their interest. You do not have to be specific when you notify applicants that your organization is unable to place them. You can tell them they were not the best match for the position. Citing a poor match between applicant and position can soften the rejection by shifting the focus away from the applicant's characteristics. When turning down applicants, you must be careful not to invade their privacy or defame them (See Chapter 9, "Even bad apples have rights.") You should refrain from making any kind of accusatory statements, e.g., "we think that you would be dangerous to our program."

Those whom you feel may benefit the organization should be cleared for the next step, which often is a personal interview.

Recruitment and applications tools

1. Camp Staff Application, American Camping Association
2. Volunteer Application, Family And Community Education & Support
3. Volunteer Application, United Way of America
4. Volunteer Wheels Volunteer Driver Application, Dennis Studebaker

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Camp Staff Application Form FM 10

Developed by *American Camping Association sm*

(Please type or print) Date of Application _____

Return to:

Name _____ Social Security Number _____

Permanent Address _____
Street & Number City State Zip Phone _____
Area Number

School or Business Address _____
Street & Number City State Zip Phone _____
Area Number

Are there any reasons you may have difficulty in performing any of the essential functions of the job for which you have applied? ☐ Yes ☐ No If so, please explain _____

If you are hired would you desire or need housing for any person(s) other than yourself at the camp? ☐ Yes ☐ No

Education

Years	School	Major Subjects	Degree Granted

Past Employment (List previous two summers or years.)

Dates	Employer	Address/Phone	Nature of Work	Supervisor	Reason for Leaving

Indicate any employer you do not wish us to contact and the reason _____

Camp Experience

Dates	Camp	Director	Address	Camper or Staff

References (Give names/addresses of 3 persons [not relatives] having knowledge of your character, experience and ability.)

Name	Address & City	Phone

What type of position do you want at camp? _____ Salary desired? _____

Dates available From _____ To _____

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In the following list, put numeral "1" before those activities you can organize and teach as an expert; "2" for those activities in which you can assist in teaching; and, "3" for those which are just your hobby; "C" for those in which you have *current* certification.

Adventure/Challenge	Camp Craft/Pioneering	Music	Sports	Track and Field	Miscellaneous
☐ Climbing/Rappelling	☐ Campcraft	☐ Lead Singing	☐ Archery	☐ Volleyball	☐ Standard First Aid Cert
☐ Ropes Course	☐ OLS Program Leader	☐ Instruments (fltr)	☐ Archery Certification	☐ Wrestling	☐ Community First Aid and Safety
☐ Spelunking	☐ OLS Instructor	☐ Accordion	☐ Badminton	☐	☐ CPR
Arts and Crafts	☐ Hiking	☐ Bugle	☐ Baseball	Waterfront Activities	☐ Responding to Emergencies
☐ Basketry	☐ Orienteering	☐ Piano	☐ Basketball	☐ Canoeing/Kayaking	☐ Auto Mechanics
☐ Ceramics	☐ Outdoor Cooking	☐ Guitar	☐ Boxing	☐ Diving	☐ Campfire Programs
☐ Electronics	☐ Overnight	☐	☐ Fencing	☐ ARC/WSI	☐ Carpentry
☐ Ham Radio	☐ Mountaineering	☐	☐ Fishing	☐ ARC/EWS	☐ Electrical
☐ Jewelry	☐ Min.-Impact Camping	Nature	☐ Bait Casting	☐ Basic Lifeguarding	☐ Evening Programs
☐ Leather Work	Dancing	☐ Animals	☐ Fly Casting	☐ BSA/Aquatic Instructor	☐ Farming
☐ Macrame	☐ Ballet	☐ Astronomy	☐ Hockey	☐ ARC/Lifeguard Training	☐ Library
☐ Metal Work	☐ Folk	☐ Birds	☐ Informal Games	☐ BSA/Lifeguard	☐ Plumbing
☐ Model Rocketry	☐ Social	☐ Conservation	☐ Ping Pong	☐ YMCA/Life Guard	☐ Shorthand
☐ Nature Crafts	☐ Square	☐ Flowers	☐ Riding	☐ Rowing	☐ Storytelling
☐ Newspaper	☐ Tap	☐ Forestry	☐ CHA Certification	☐ Sailing	☐ Word Processing
☐ Painting	☐	☐ Insects	☐ HSI Instructor	☐ Scuba	☐ Worship Services
☐ Photography	☐	☐ Rocks and Minerals	☐ Rifle	☐ Swimming	☐ Language
☐ Darkroom	Dramatics	☐ Trees and Shrubs	☐ NRA Instructor	☐ Water Skiing	
☐ Sketching	☐ Creative	☐ Weather	☐ Soccer	☐ Board Sailing	
☐ Weaving	☐ Play Directing	☐ Gardening	☐ Softball	☐ Rafting	
☐ Woodworking	☐ Skills and Stunts	☐ Animal Care	☐ Tennis	☐ Synchronized Swimming	

Answer these questions only if applying for a position requiring driving

Do you have a valid driver's license? ☐ Yes ☐ No State _____

Do you have current chauffeur's-type license? ☐ Yes ☐ No Do you have a commercial driver's license? ☐ Yes ☐ No

What contributions do you think you can make at camp? _____

What contribution do you think a well-run camp can make to children? _____

Write a brief biographical sketch, including specialized training in camping, and experience or training in other fields which might have a bearing on the position(s) for which you are applying. _____

Are you available for an interview? ☐ Yes ☐ No Where? _____

I authorize investigation of all statements herein and release the camp and all others from liability in connection with same. I understand that, if employed, I will be an at-will employee and that any agreement to the contrary must be in writing and signed by the director of the camp. I also understand that untrue, misleading, or omitted information herein may result in dismissal, regardless of the time of discovery by the camp.

Signature _____

All statements become part of any future employee personnel files.

This form has been drafted to comply with federal employment laws; however, ACA assumes no responsibility or liability for the use of this form.

VOLUNTEER APPLICATION

Name _____ Date _____

Address _____ City _____ Zip _____

Home Phone _____ Work Phone _____

Business _____ May we call you at work? ☐ Yes ☐ No

Current Job Responsibilities and Hours _____

Previous Work Experience _____

Special Skills, Training, and Hobbies _____

Community Affiliations (Clubs, Churches, Service Organizations, etc.) _____

Previous Volunteer Experience _____

How will your volunteer work affect your family and work responsibilities? _____

Can you make a commitment to this program for at least one year? ☐ Yes ☐ No

If no, please explain _____

When are you able to volunteer? ☐ Days ☐ Eves ☐ Weekends

How many hours per week are you willing to volunteer? _____

Do you have: Your own transportation? ☐ Yes ☐ NoLiability Insurance? ☐ Yes ☐ NoValid Driver's License? ☐ Yes ☐ No

Why do you want to volunteer in a child abuse and neglect program? _____

What qualities do you feel you have that would enable you to help another person to develop living skills and self confidence? _____

Have you had any experience with adults and/or children with problems? ☐ Yes ☐ No

Please explain _____

How were you parented as a child? _____

How do you (or did you) discipline your own child(ren)? _____

Have you ever been exposed to an incident of child abuse or neglect? ☐ Yes ☐ No

What are your feelings concerning this area? _____

Would you be available for phone calls on a 24-hour basis? ☐ Yes ☐ NoWould you be available for a greater amount of time initially? ☐ Yes ☐ No

Please list 3 professional and/or personal (not including relatives) references with complete address and phone below. References remain confidential.

Name/Relationship	Address	City	Zip	Phone
-------------------	---------	------	-----	-------

1. _____

2. _____

3. _____

Signature _____ 38 _____

Volunteer Application

Application _____ Date _____
 Name _____ Date of Birth _____
 Home Address _____
 Work Phone _____ Home Phone _____
 Highest Level of Education _____
 Profession _____ Job Title _____
 Employer _____
 Address _____

Would you like us to keep your employer abreast of your volunteer service and achievement?

☐ Yes ☐ No

Special training, skills, hobbies _____

Groups, clubs, organizational membership _____

Prior volunteer experience _____

What experiences have you had that may prepare you to work as a volunteer with people in employment, literacy, or family support programs? _____

Why do you want to take part in volunteer activities? _____

In which of the following would you like to participate? (Check one or more.)

- | | |
|---|---|
| ☐ Mentor | ☐ Skills/literacy tutor |
| ☐ Guest speaker/workshop facilitator | ☐ Field trips |
| ☐ Project coordinator | ☐ Program administration |
| ☐ Publicity and recruitment | ☐ Newsletter writing |

Driver's License? ☐ Yes ☐ No Car Insurance? ☐ Yes ☐ No

Car available for transporting others? ☐ Yes ☐ No

Times available (Place an "X" _____ in any time slots when you could be available.)

a.m.	7:00	8:00	9:00	10:00	11:00	12:00	p.m.	1:00	2:00	3:00	4:00	5:00	6:00
MON.	_____												
TUE.	_____												
WED.	_____												
THUR.	_____												
FRI.	_____												
SAT.	_____												
SUN.	_____												

REFERENCES: Please list three people who know you well and can attest to your character, skill, and dependability. Be sure to include your current or last employer.

Name/Address	Occupation	Phone No.
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____

Signature _____ Date _____

Volunteer Wheels Volunteer Driver Application

Date of Birth _____ Driver's License # _____
 Name _____ Street Address _____
 City _____ Zip _____ Phone _____
 In case of Emergency, Notify _____ Phone _____
 Current Employer: Company _____ Address _____
 Position Held _____ From _____
 Last Employer: Company _____ Address _____
 Position Held _____ From _____ To _____
 Reason for Leaving _____

Special Certificates: i.e. CPR, Medical Certificate, Defensive Driving, First Aid. (Indicate certificate(s) and expiration date): _____

Accident Record for the Past Five Years (Attach sheet if more space is needed)

Date	Nature of Accident (head-on, rear-end, etc.)	Were you at fault? Yes/No	Fatalities	Injuries
1. _____	_____	_____	_____	_____
2. _____	_____	_____	_____	_____
3. _____	_____	_____	_____	_____

Traffic Convictions (Moving Violations Only) for the Past Five Years

Location (City and State)	Date	Infraction	Penalty
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____

- A. Have you ever been denied a license, permit or privilege to operate a motor vehicle? ☐ Yes ☐ No
 B. Has any license, permit or privilege ever been suspended or revoked? ☐ Yes ☐ No

"I agree to read the Volunteer Wheels Handbook and abide by the policies therein, including attending a defensive driving and First Aid/CPR class in my first year of volunteering, provided by Volunteer Wheels. I will inform Volunteer Wheels of any moving violations or at-fault accidents that occur during my tenure as a volunteer whether or not they occur while volunteering, and agree to maintain at least the minimum level of auto insurance on my vehicle if driving my personal auto as a volunteer.

I also understand it is the policy of Volunteer Wheels that all passengers and drivers must at all times be seatbelted when riding with Volunteer Wheels. I agree to abide by this policy and will not transport a passenger who refuses to fasten or have their seatbelt fastened unless excused from this requirement with a physician's certificate.

This certifies that this application was completed by me, and that all entries on it and information in it are true and complete to the best of my knowledge."

Signed _____ Date _____



Interviews

Interviews provide the opportunity for staff to meet, face-to-face, with applicants. The interview provides both the organization and the applicant an opportunity to obtain information as indicated on the chart below.

Organization

- ◆ Expand the information from the application
- ◆ Probe the validity of the information
- ◆ Obtain nonverbal information
- ◆ Look for other positive and negative characteristics that could influence the placement of the applicant in a staff position

Applicant

- ◆ Learn more about the organization
- ◆ Develop a more complete understanding of the requirements for the positions available
- ◆ Get a taste of the organizational culture
- ◆ Decide if he or she wants to complete the placement process

Experienced personnel managers caution against putting too much emphasis on the interview as the sole basis for selection of an applicant. Keep in mind the interview represents one brief exposure to an applicant who may not have developed good interview skills or may just be having a bad day. Properly conducted interviews, however, can add to the totality of information used by the organization to make the selection decision.

Because the interview can uncover grounds for rejecting an applicant and may cause unsuitable applicants to withdraw, it needs to be prepared for and conducted properly.

PREPARATION FOR THE INTERVIEW

Interviewers need to review the requirements of the positions for which they are conducting interviews and familiarize themselves with the information provided on the application. Analysis of both of these sources of information should enable the interviewer to formulate questions to ask the applicant. Questions should be written down so that the interviewer does not forget to ask them and so that there is consistency among all interviews for the same position.

We all have our biases. One of the essential qualities of good interviewers is having insight into their own biases and not permitting those feelings to interfere with selecting qualified applicants.

When preparing to conduct an interview, the interviewer should identify position responsibilities associated with specific risk factors. He or she needs to be prepared to address these factors during the interview. For example, if the position involves working with vulnerable client populations such as children, the interviewer needs to consider screening for possible abusive tendencies. The interviewer should prepare questions about past experience with children and discipline techniques the applicant deems appropriate.

Interviewers should reserve enough time for the interviews to enable comprehensive exchange of information between the interviewer and the applicant. Remember, the applicant also needs to have an opportunity to ask questions about the organization and specific position responsibilities.

WHO SHOULD INTERVIEW?

Ideally, each applicant should be interviewed by more than one interviewer in an organization. The first interviewer may be responsible for matching the applicant with available positions. The second interviewer may be the supervisor responsible for overseeing the specific position under consideration or someone in a similar position to the vacancy. After each has interviewed the candidates, they should share their information and make a decision on the suitability of each applicant.

While some organizations employ trained interviewers to screen the applicants for positions in their programs, other organizations rely upon volunteers to select volunteers. Most Sunday school teachers, Scout leaders, youth sport coaches, and many other volunteers are selected for their positions by individuals who have little or no training in conducting interviews. For these individuals, the questions in the following section should be extremely helpful.

It is a noble trait of many people to try to think the best of everyone and deny the existence of negative information. If you feel this way, you need to recognize this as one of your biases and try to overcome it when evaluating applicants. When it comes to screening staff applicants, a little skepticism may be healthy.

EXAMPLES OF INTERVIEW QUESTIONS

Interview questions should be open-ended, thereby requiring more response than a simple "yes" or "no." The following sets of suggested questions can be asked to screen for specific risk factors.

Child Abuse

The following are some "Key Questions" suggested by the Boys and Girls Clubs of America, which have been adapted.

- *Why are you interested in this position?* Be alert for someone who over-identifies with children, is unduly excited about the possibility of working with children, or who emphasizes that working with children is much easier than working with adults.
- *How would you describe yourself?* Be alert for someone who indicates shyness or is withdrawn or passive.

- *Please tell me about a situation in which you were responsible for disciplining a child, other than your own.* Listen for use of excessive force, denigration of the child, unrealistic expectations about children's needs, or use of discipline techniques that would violate your organization's policies.
- *What is there about children that makes you enjoy working with them?* Listen for over-identification with children; for statements that young children are so easy to work with; or negative statements about teenagers or adults when compared to younger children.
- *What is there about this position that appeals to you most?* Listen for appropriate skills, qualifications, etc. Also look for high interest in one-on-one activities with children, preference for a particular age and gender of child, and idealized statements about "saving children."
- *In what kind of supervisory style do you prefer to function?* Be alert for preference to be left alone to do their "own thing." Also use this opportunity to explain the monitoring and supervision techniques used to ensure the safety of the children in the program. The applicant should understand that there will be "zero tolerance" for any form of child mistreatment within the program.
- *What was your childhood like?* This question is intended to help uncover if the applicant was subjected to abuse as a child. If the applicant was, there may be an elevated chance that he or she could be abusive. Individuals who were abused as children and who have resolved their victimization can make excellent volunteers and provide positive role models for children. Applicants who appear not to have resolved their own childhood victimization should be screened out of unsupervised contact with children.

The interviewer should examine how the applicant relates to children and also what the nature of their peer relations are. Many child molesters will have extremely limited contact with members of their own peer group. Big Brothers/Big Sisters of America uses a list of "red flags" or factors that should raise concern (see next page).

Obviously, many of the factors listed delve into very personal aspects of the applicants' lives. Because of the sensitive nature of the information needed from applicants for some positions, interviewers for those positions may need special training and possibly a degree in social work or psychology.

Other than individuals with a documented history of child victimization, you should not rule a person out of consideration based on any *one* of these factors. Many of these characteristics are just as common to individuals who are great for children as they are for individuals who constitute a threat to them. A pattern of these factors, however, would be cause for concern.

Personal Prejudices

Community-serving organizations are people-serving organizations. Staff for these organizations must be able to interact positively with service recipients from diverse

Caution

Applicants who are good candidates for positions caring for children and those who are a threat to children share many characteristics. Rigorous interviewing can help you to tell the difference.



Take Note!!

Red Flags for Children and Youth Workers

- A. Single and has had no significant "age-appropriate" romantic relationships.
- B. Married, but has shallow or dependent relationship (a marriage of convenience).
- C. Activities and interests primarily involve children; absence of any meaningful peer relationships.
- D. Individual was sexually abused as a child.
- E. Immaturity; inappropriate dependency on spouse, parents, or institutions; unable to accept responsibility or make decisions.
- F. Fearful of adult world; surrounds self with children.
- G. Sees children as "pure, innocent, clean."
- H. Anxiety or discomfort with adult sexual role.
- I. Shows revulsion to subject of homosexuality.
- J. Over-anxious to obtain a match, eager to bend ground-rules for overnights.
- K. Describes preferences in [child] with specific physical preferences.
- L. Unstable employment and/or residence history, premature separation from service.
- M. Low self-esteem.
- N. Abuse of alcohol or drugs.
- O. Criminal record—crimes against children or other crimes including misdemeanors which evidence immature behavior.
- P. Prefers a vulnerable child, frail, emotionally dependent.
- Q. Poor social adjustment in childhood and adolescence.
- R. Poor adjustment to homelife in childhood and adolescence.
- S. Volunteer finds own child and asks [organization] to legitimize relationship.
- T. Child-oriented toys or things such as video equipment, photographic equipment, Jacuzzi, swimming pool.

Big Brothers/Big Sisters of America: Case Management Training

ethnic, cultural, and religious groups. Extreme views concerning these groups or, even personal belief systems that encourage proselytizing, may interfere with the fulfillment of the organization's mission. The following questions are designed to probe applicants' prejudices. Sensitivity must be exercised, though, to avoid exclusion on an impermissible basis.

- *Can you tell me about any experiences you may have had working with members of*

ethnic groups? Members of minority groups can be asked about their experiences with Caucasians or a different minority group. This question is intended to open the topic to discussion. The interviewer may want to focus on a particular minority group, if the organization serves a concentration of that particular group.

- ***Have you ever had a negative experience with a member of a particular ethnic group?***

This is a follow-up question to the first and provides an opportunity for probing into what the nature of such an experience might have been and if it created any generalized feelings about any group.

- ***Are there any words which you use regularly that could be offensive to a member of a minority group or person of the opposite sex?*** This question addresses the sensitivity of the applicant to unconscious biases as reflected in speech patterns. Some applicants may admit to using such language but try to justify its use by saying that it really does not mean anything. If an applicant routinely uses denigrating terms to refer to minority groups or to the opposite sex, the words used probably do reflect an underlying attitude.

Putting aside the issue of whether an individual constitutes an identifiable threat to children, you may feel that emotional immaturity would make him or her a poor candidate for working with children—also legitimate grounds for screening out.

Criminal History

The following questions may be helpful to examine applicants' possible criminal history as related to position requirements.

- ***Have you ever been convicted of a criminal offense including criminal driving violations?*** The answer to this question may be subject to verification by checking law enforcement records. Addressing the subject during the interview provides an opportunity for applicants to explain their side of the story and give any mitigating circumstances. For example, a misdemeanor offense during college may not have any bearing on a senior citizen's character. A pattern of criminal behavior has stronger predictive value.
- ***Have you ever held a position in which you were required to be bonded and had the bond refused or revoked?*** This could indicate financial problems for which a bonding company found reason to believe the individual should not have responsibility for handling someone else's funds.

Driving History

An applicant's driving practices are relevant for any position requiring operation of a vehicle. This may be while transporting people to and from program activities or transporting goods or materials such as in the delivery of meals for "Meals-on-Wheels." Some organizations also consider serious driving violations to be indicators of poor character or judgment. The following questions are typical of the ones that the interviewer should ask concerning motor vehicle operation.

- ***Have you ever been convicted of driving under the influence of alcohol or other drugs?*** This question may reveal a substance abuse problem that extends beyond driving.
- ***Have you received any traffic tickets or had any automobile accidents in the past***

two years? This question is intended to help explore the applicant's driving skills. It may also reveal immaturity and lack of judgment.

- *Describe the kind of driver you are.* This is a follow-up question to the previous one. Look for specific traits such as always fastening their safety-belts (the law in most states); never driving after consuming alcohol; obeying the speed limit; or, never having wrecked a vehicle. This may be a good time for the interviewer to explain the organization's policy, if one exists, about checking the motor vehicle department records of individuals prior to job placement.
- *Have you ever operated the kind of vehicle that we have?* Driving the particular piece of equipment (school bus, van, pick-up) may be different than the three passenger super-compact that the applicant drives each day. At the very least, the organization would want to supervise the applicant closely until completely familiar with the organization's vehicle.
- *Do you currently own an automobile? If so, are you licensed and adequately insured? Who is your insurance company?* Many jurisdictions require motor vehicle owners to have automobile insurance. Not having insurance or being part of an assigned risk pool could be a clue to unsafe driving practices. Not only are these questions good for screening, but they also help the organization protect itself.

HOME VISITATIONS

Meeting with applicants in their homes is a special type of interview and should be carefully considered when the position requires a long-term, close relationship such as in a mentoring program. An interview in the home may be especially useful for screening applicants for long-term and emergency foster-care programs.

Another kind of position for which a home visit might be appropriate is one that requires a considerable commitment of time away from the family. For this latter situation, interviewing other family members for their reactions could reveal sources of stress that the individual would feel in the position.

If a vulnerable person is going to spend more than incidental time in a staffer's home, the other individuals in the home may need to be screened.

By interviewing applicants and others living in the home, organizations can assess lifestyle, evaluate living conditions, and determine the kind of environment to which the service recipient would be exposed if permitted to visit the home.

Organizations should develop a check list and guide for home visitations. Criteria used for the assessment should be established prior to the visit and applied consistently to all applicants. Individuals making these visitations should be trained to conduct this kind of interview and be sensitive to applicants' privacy.

If a position presupposes some visitation by a person with a disability to the applicant's home, the interviewer should evaluate the accessibility of the home. The more outside assistance that is required for a physically disabled individual, the greater the risks for injury or abuse.

Interview tools

1. Volunteer Interview Format, Family And Community Education & Support
2. Mentor Interviews, New York State Mentoring Program
3. Redirect Questions, Minnesota Department of Human Services

NOTE: The forms in this book are for illustrative purposes only. They are based on forms that have been used in the field. They provide "real life" examples, rather than a recommended practice.

The authoring organizations provided forms that they had designed for specific uses. The forms may not be appropriate, or complete, for other purposes or types of organizations. Copying the material may also be restricted by copyright laws.

VOLUNTEER INTERVIEW FORMAT

Name _____

Interviewer(s) _____ Date _____

1. Tell me about your childhood. What are some of your happiest/saddest memories? Siblings?
2. Tell me about your mother (father). What did you like best about her/him? Least? How did she/he discipline? Did it work?
3. What things have you done that have given you the greatest satisfaction?
4. What has been the biggest disappointment in your life?
5. Tell me about your job. What do you like/dislike about it?
6. Where do you see yourself 1 year (5 years) from now?
7. Tell me about your family. Husband/wife/children. How do they feel about your volunteering?
8. Describe your temperament. What do you like best about yourself? What would you improve? Strengths? Areas of discomfort?
9. Abuse and neglect issues?
10. Why do you want to volunteer in the field of child abuse/neglect?
11. What do you need to get from a volunteer experience?
12. What questions/concerns do you have about being a volunteer?
13. Is there any other information you would like to share about yourself?

General Impressions _____

Red Flags _____

Reference Letters Mailed _____ Scheduled for Training _____

Mentor Interviews

Interviewing prospective mentors personally affords program coordinators an important opportunity to observe how the volunteers interact socially. Coordinators can also ask questions and voice any concerns they may have based on a prospective mentor's applications.

Likewise, mentors can and should be encouraged to voice their own questions and concerns regarding the mentor's role. Clarifying roles, policies and expectations for program participants before they become involved decreases risk and increases safety.

Remember that some individuals may feel nervous or intimidated in a one-to-one interview. It can be helpful to both the screening and matching process to observe potential mentors in a workshop or group activity with young people. Similarly, some program coordinators may be uncomfortable making screening decisions alone. Many decide to involve members of the school-based planning committee in this process.

Some suggested interview questions for exploring volunteers' experiences with children and their motivation for mentoring are:

- How did you learn about the mentoring program?
- Why are you interested in becoming a mentor?
- Have you had previous volunteer experience?
- Are you currently involved with young people? If so, how?
- What would an ideal mentor/mentee relationship include?
- What do you think the most important aspect of the mentoring relationship would be?
- What time commitment can you make to the mentoring program, e.g., frequency and duration of meetings, program length, etc.?
- Do you have any specific requests for being matched with a mentee, e.g., race, gender, interests, etc., and why?
- What would you hope to accomplish in your mentoring relationship?
- What is the most important advice you could share with a mentee?
- What would you expect of your mentee?
- What are some of the challenges young people are facing today?

Reviewing their impressions after interviews, program coordinators may take note of the following:

- applicant's readiness for mentoring;
- applicant's strengths/weaknesses;
- applicant's understanding of children's needs; and
- potential matches with selected mentees.

The interview can be an excellent time to inform candidates about how and when you will notify them about their selection status, and to clarify the mentor's time commitment.

Redirect Questions

Used to clarify when an applicant indicates a history of child abuse or alcoholism.

1. When did it occur? How old were you? (look at duration/severity/recent nature/pattern of behavior)
2. What happened?
3. What was the resolution?
4. Where are you at with it today?
5. How might you use what you learned as a volunteer in this program?



Reference checks

When you have selected the finalists for a paid or volunteer position, you are ready to begin reference checks. The first major hurdle in this task is getting the reference to respond candidly to your questions. That can be especially difficult if the reference is a former employer.

Many employers, fearing defamation lawsuits, limit the information they release about former staff members. This is particularly true if you go through a personnel officer.

The degree of cooperation you receive may depend on how you approach the references. If possible, talk directly with the person who actually supervised the applicant—whether in a paid or volunteer position.

By talking to the person's former supervisor, you will obtain information from someone who knew the individual personally—not just from a piece of paper in the file drawer. The supervisor is likely to have a better sense of whether the applicant poses a danger.

A past employer may refuse to answer your questions, but you'll never know unless you ask.

Checking references, as with interviewing and screening applications, begins by becoming familiar with the position description. You are attempting to determine whether the reference knows anything about the applicant that raises a "red flag." You should also be attentive to any discrepancies between information from the application and from the references since that may indicate the applicant is not always truthful.

DO'S

Individuals who check references should identify themselves and the organization they represent. They should tell the person contacted that the applicant has given permission for the organization to contact the reference and request information regarding position-related abilities and qualifications. Reference checkers should prepare a script with precise questions to verify information on the application form and to probe more deeply into specific qualifications for the position being filled.

You should almost always make the initial contact via telephone call. This enables you to receive information more swiftly. Also, you have an opportunity to ask questions and clarify the information being provided, and you can assess the non-verbal information conveyed by tone of voice, hesitancy, emphasis, and demeanor.

Toni Weisgrau, a human resources consultant, suggests that when contacting a former employer for references there are some basic rules that will help you get the information you are seeking.

- Make your managerial or supervisory position clear to the former employer and give a brief description of the position you are filling.
- Ask only position-related questions. When questioning about personal characteristics, the questions should be relevant to the position responsibilities or conditions.
- Do not discuss information that would be unlawful to use in the placement process, such as race or sex, which are almost always impermissible for prospective employees and generally ill-advised for volunteers as well.

Good Question To Ask

Would you be pleased to have the applicant work with you again?

After you make an initial contact by telephone, if the individual giving the reference asks you to send a request in writing with a copy of the release signed by the applicant, respond quickly. Try to negotiate a deadline for returning the forms to you. By establishing this contact, you have set the stage for contacting the reference again if you do not receive the information by the agreed upon deadline. You have also established a point of contact that you can use to clarify information once the reference form has been returned.

When you contact an applicant's personal references, remember that the applicant selected them for the positive impression he or she thought they would give. Nonetheless, take the task seriously. References sometimes reveal critical information about applicants.

You should verify the nature of the relationship between the applicant and personal reference and the length of time they have known each other. You may be able to increase the objectivity of the information you receive from the reference if you stress the kinds of responsibilities that the applicant will have if selected for the position.

DON'TS

The most common reference-checking mistake is to miss an opportunity to get critical information from the applicant. Try to avoid the mistakes below.

- **Asking leading questions.** When you are checking references, let the reference provide the information. Instead of "Tom Jones told us that you and he have been friends for 10 years. Is that right?" you might want to ask, "How long have you and Tom Jones known each other?"
- **Asking questions that can be answered by a simple yes or no.** You need to phrase the questions so that references are required to think about their responses and to answer in their own words.
- **Asking questions which are too general.** Some information you need is very specific relative to the nature of the position and the risks you have identified.

SPECIFIC QUESTIONS TO ASK

After verifying the factual information from the application (dates of employment, salary, position title, duties, etc.) there are some direct questions you should ask if the position involves working with children, handling large sums of money, or requires operating motor vehicles.

Working with Children

- ✓ *How would you describe his/her personal characteristics?* Probe for immaturity, shyness, introversion, non-assertiveness, indecision, or passive acquiescence.
- ✓ *How would you say he/she relates with children?* Probe whether or not he/she relinquishes adult role and responsibility, tends to become more like the child, places a premium on one-to-one activities rather than group activities.
- ✓ *Have you ever seen him/her discipline a child? If so, please describe what you saw him/her do?* The manner in which individuals try to control children's behavior can reveal their true character. Disciplinary techniques used should not be violent or emotionally degrading. They should deal with the issues involved, be constructive, and appropriate for the age of the child being disciplined.
- ✓ *I'd be interested in knowing if you think there may be any problems or conditions that would interfere with the applicant's ability to care for children or in any way endanger the children under the applicant's care. These problems include substance abuse, mental or emotional illness, or history of child mistreatment.* While the reason for this question is obvious, the kinds of information you may receive are not. Listen not only to the words, but also to how the words are said—is there hesitancy? equivocation?

Handling Money

- ✓ _____ *has applied for a position that requires handling large sums of money. Are you aware of any problems he/she may have that would cause you concern about entrusting him/her with this responsibility?* Listen for general concern about honesty and dependability. Ask for specific examples of problems so that you eliminate rumors and gossip.
- ✓ *Are you aware of any financial difficulties, drug abuse problems or history of criminal conduct?* Follow-up question to the first one with specific focus on known risk factors.

Motor Vehicle Operation

- ✓ *Have you ever ridden in a vehicle while he/she was driving? If you have, how would you characterize his/her driving?* Warning flags you should listen for include aggressive driving, pushing the speed limit, recklessness.
- ✓ *Are you aware of any incidence in which he/she operated a motor vehicle while under the influence of alcohol or other drugs?* Listen for equivocation ("Well he really wasn't under the influence, I mean he had only had a couple of beers"); evasiveness ("No, I don't really know for a fact, that he has ever driven after drinking."); justifications ("Well, hasn't everyone at one time or another.").

READING BETWEEN THE LINES

Okay, you have finished checking all of the references and have taken a lot of notes. How do you interpret the information you have received? Since you do not personally know the individuals giving you the information, how can you be sure that their re-

sponses are valid? The simple answer to the last question is that you cannot. You must take the information received from references and add it to the totality of information available on the applicants: from the applications, the interviews and the reference checks.

The information should be consistent with no obvious contradictions. If the applicant told you one thing during the interview and the reference told you something completely different, warning flags should be waving. If the application showed a long term of volunteer service with a particular organization and they say they never heard of him, red lights and sirens should be going off.

Confidentiality

All information obtained during screening should be considered confidential and subject to strict control. Your organization should have policies regarding its storage, accessibility, and disposal. These policies should be rigorously implemented and enforced.

Any negative information you receive should be checked out. There may be reasons for discrepancies that are very logical and yet beyond the control of an applicant. It is not your role to excuse the information out of hand. You need to confront the applicant with the negative information and give him or her a chance to explain any discrepancies. When confront-

ing the applicant, you also need to respect the confidentiality of the source who gave you the information.

Reference checks tools

1. Baltimore City Public Schools Partnership Mentoring Reference Check Form, Baltimore Mentoring Institute
2. Questions to Ask a Reference, National Center on Child Abuse and Neglect, *Caregivers of Young Children: Preventing and Responding to Child Maltreatment*

NOTE: The forms in this book are for illustrative purposes only. They are based on forms that have been used in the field. They provide "real life" examples, rather than a recommended practice.

The authoring organizations provided forms that they had designed for specific uses. The forms may not be appropriate, or complete, for other purposes or types of organizations. Copying the material may also be restricted by copyright laws.

**BALTIMORE CITY PUBLIC SCHOOLS PARTNERSHIP MENTORING
REFERENCE CHECK FORM**

Date _____
Applicant Name _____
Reference Name _____
Address _____
Telephone _____

1. In what capacity have you known the applicant and for how long? _____

2. How well do you know the applicant? _____

3. How would you describe the applicant? _____

4. Describe the applicant's relationship with people in general. _____

5. How would you rate the applicant's ability to relate to youth in general? _____

6. To the best of your knowledge has the applicant ever been accused or convicted of a crime? _____

7. Do you feel the applicant is in the position to make a one-year commitment to a child? _____

8. Would you be comfortable having the applicant as a mentor to your own child? _____

9. Do you know of any traits or problems which would be detrimental in the applicant's ability to work with a child? _____

Additional Comments _____

Reference Check Completed By _____ **56** _____
(Please Print)

Questions To Ask a Reference

For Professional References

- When and where have you observed the candidate working with young children?
- What skills does this candidate demonstrate in working with young children?
- What is this person's philosophy of discipline? Please give examples of how he/she uses a variety of discipline techniques based on the child and the situation.
- Does this candidate demonstrate that he/she has realistic expectations for children's behavior? Please provide some examples.
- Does this candidate allow children to make choices for themselves and encourage independence (as opposed to directing their activities and controlling their play)?
- Does this individual ask for support from the supervisor or colleagues when needed?
- Does this candidate enjoy caring for children?
- How long did the candidate work with you? Why did he/she leave? Who was his or her immediate supervisor?
- How well does the candidate communicate ideas and opinions to others?
- How does the candidate handle frustration and criticism on the job?
- Does the candidate show interest in training or other means to improve his/her skills and knowledge?
- How does the candidate communicate with parents?
- Have there been any complaints regarding the candidate's care of children?
- To your knowledge, has the candidate had any criminal convictions? If so, what are they?
- Would you rehire this individual to work with young children?

For Personal References

- How long have you known the candidate?
- In what capacity do you know the candidate?
- Where and when have you observed the candidate working with young children?
- What skills do you feel he/she demonstrates in working with young children?
- How does the candidate respond in stressful situations?
- To your knowledge, has the candidate had any criminal convictions? If so, what are they?



Record checks

The marvels of modern technology make it much easier to obtain information about aspects of individuals' lives previously considered confidential. Criminal history, child abuse, driving and credit bureau records are available legally for various legitimate purposes. Because these records are available, there has been a great deal of pressure to require, by law, their use for staff screening. Most of this attention has been centered on programs serving children. It is beginning to spread to programs serving the elderly and individuals with disabilities.

The availability of personal information in easily accessible databases provides another useful tool for screening applicants. But like any tool, you need to use it properly to achieve the desired results. Record checking is *not* a panacea. *You should not be lulled into a false sense of security.* Conducting a record check is not a substitute for other screening tools or for risk reduction techniques such as supervision and monitoring after placement. Moreover, conducting a record check should not lead you to disregard danger signs you receive during other parts of the screening process.

A clean record does not mean that the applicant has an unblemished past.

The following sections should help you decide if your organization should use record checking as a part of its applicant screening process. They will help you to: 1) decide which records to check; 2) develop procedures for checking records; and 3) evaluate the information you receive.

DECIDE WHICH RECORDS TO CHECK

Potentially relevant information on individuals may be found in criminal history records, child abuse registries, driving records, and credit bureaus. Your organization needs to decide if the information from any of these sources is necessary for your applicant screening process.

Some proponents of record checks as a screening tool assert that the mere possibility of a check will encourage self-screening. Individuals with disqualifying records will be discouraged from applying. These advocates say that a low number of "hits" should not be interpreted as demonstrating that the checks are unnecessary. Instead, the process itself creates a barrier to "bad apples." Common sense tends to support this argument: "what reasonably intelligent person would knowingly risk exposure if he or she knew that records existed that would disqualify him or her from service?"

Other proponents claim that using official records as screening tools is useful for defending against future litigation. An organization permitted to screen staff using these records may face unfavorable court decisions if it fails to do so. Failure to examine acces-

sible records may constitute "negligent employment," if problems arise after an individual is placed in a staff position (see Chapter 2, "Screening adequately for the law").

Both arguments for the use of these records may be valid. However, your organization needs to balance these arguments against other factors: relevance to the position, availability, usefulness, cost and legal permissibility.

Relevance to the Position

Throughout this *Tool Kit*, we have stressed the need for position descriptions to identify potential risks and as the basis for conducting specific screening procedures. Chapter 1, "Introduction," includes a chart that lists examples of position responsibilities with estimates of the relative importance of specific screening processes corresponding to each responsibility.

We repeat our assertions here—the *decision to check these records should be based primarily upon the specific responsibilities of the position*. If operation of a motor vehicle is not part of the position description, then why check driving records? If the position does not call for handling money or other organizational assets, then why check credit bureau records? If the position involves only group contact under close supervision, are criminal history checks necessary?

Availability

The kinds of records discussed here are maintained in nearly every state or on a nationwide basis. The fact that they are maintained does not mean that they are accessible by your organization, however. For example, child abuse registry information is probably least available for use in applicant screening. According to an American Bar Association report, "Generally the statutes establishing the registries limit access to law enforcement agencies, courts, prosecutors, researchers, the subject of the report(s), doctors treating children who may have been abused, and agencies having legal responsibility to care for or treat children who may have been abused." (Davis, 1994)

If your organization indicates that it will perform record checks, then you should implement the record checks. An injured party will claim that your organization acknowledged that it was reasonable to use this tool, and failure to do so was negligent.

Several states have open record policies with respect to criminal history records. This means that, in those states, anyone can request a criminal history record check on anyone

else if they pay a fee and provide minimal information such as name, date of birth, social security number and last known address.

Credit bureau reporting is controlled by the federal *Fair Credit Reporting Act* which permits information to be released in accordance with the individual's written instruction or to any person who could reasonably use the information in connection with employment or any other legitimate business need.

Usefulness

Organizations have to decide how they will use the information from record checks once they obtain it. At the same time, they need to question the significance of the information or a lack of information. If there is adverse information, should it lead one to

conclude that the behavior will be repeated? The records discussed in this chapter may have limited usefulness as predictors of future behavior.

What happens when no information is found? Does the absence of information mean that the applicant should be given a clean bill of health? Not necessarily—the accuracy and completeness of criminal history records in state repositories and the FBI files depend upon bringing together information from a variety of sources over a period of time and placing it in the same file. This current system is subject to delays and mistakes. For example, under the current FBI system of criminal record checks, only about 17% of the serious crimes are entered into the national record system. There is a good possibility that even if an applicant has committed a crime, it would not be revealed by a criminal history record check using the present system if the crime were in another state.

Personal information obtained from databases should be used carefully and its significance not extended beyond the limits of the databases checked. Such information may be a part, but not the entirety, of a comprehensive applicant screening process.

It is relatively easy to obtain driving records on applicants from the state in which they are currently licensed. However, individuals who are newly licensed in your state may have extensive records of driving violations and accidents in other states which, if relevant, should be examined. If there are applicants who were licensed in other states in the past five years, you may want to ask them to furnish copies of their driving records from the other states.

Cost

Using criminal history records, child abuse registries, drivers' records and credit bureau records can be costly to organizations in several ways. Of course, there are the monetary costs associated with accessing databases for individual information. In most states there are fees charged by the state for using their records systems. In Florida, for example, a state criminal history record check costs \$10; information from the child abuse registry costs an additional fee of \$8; and the FBI charges non-criminal justice system users \$24 (\$18 for nonprofit organizations) for a fingerprint-based check of criminal history records.

There are costs to organizations other than dollars and cents for using records that have a potential of revealing information in which an individual has a privacy interest. In addition to discouraging the "bad apples" from applying to work for your organization, you run the risk of discouraging potentially good staff members who just want to preserve their privacy or avoid the nuisance.

In addition to the costs associated with performing record checks, the organization needs to consider the costs of *not* performing record checks. It needs to decide if there are risks that a reasonable person could anticipate and which would be reduced if the record checks were performed.

A purely mercenary approach would be to ask the questions, "What would the worst case scenario be for not conducting a record check?" and, "Is the cost of doing the record checks higher than the probable liability award?" Community-serving organizations cannot afford to treat their clientele's safety in such a cavalier manner, so they need to look for other alternatives.

Organizations need to weigh several cost factors when developing their record checking policies. These factors include cash outlays, loss of potential staff, cost of not conducting record checks, and consideration of possible alternatives and their costs.

Another way of examining costs is to look for alternatives to performing record checks that could be less costly. Perhaps the organization should obtain a bond for the treasurer for less expense, or less intrusion of individual privacy, than the costs of a record check. (The bonding company may do the record check, but that could be more comfortable for the applicant than your organization performing the record check. Also, the cost for the bond could possibly be more than the cost of a record check, but you would be getting more for your money as your losses would be limited as well.)

Another, less costly, alternative to record checks may be increasing supervision so that vulnerable service recipients would not be alone, one-on-one, with service providers. Sending individuals out in teams to perform services could lead to greater safety for service recipients, and there could be other program benefits, such as greater staff satisfaction.

Legal Permissibility

For paid employees, there are restrictions placed on the kinds of information the employer may use in making the hiring decision. For example, use of arrest information to disqualify candidates for paid positions has been found by the courts to be discriminatory under *Title VII of the Civil Rights Act of 1964* (see Chapter 9, "Even bad apples have rights," for a discussion of federal laws pertaining to discrimination in staff screening). However, if the organization can demonstrate a *business necessity* for an employment practice, it will not be considered unlawful discrimination. According to the American Bar Association, "child-serving organizations ... are very likely to have what the courts would consider a 'business necessity' to check arrest records of prospective and current employees." (American Bar Association, 1991)

The use of criminal history records for checking the backgrounds of caregivers for vulnerable populations is becoming increasingly popular with legislative bodies at both the federal and state levels. Legislation enacted by the United States Congress as well as by approximately 30 state legislatures allows organizations providing care for children to screen their staffs using criminal history databases.

Your organization may be legally required to conduct criminal history or child abuse registry record checks on staff in some kinds of programs. For example, in some states, the screening has been mandated for child caregivers including camp staffs. In other states, even when there are mandates for record checks for some kinds of programs, the same programs operated by nonprofit organizations and staffed by volunteers are exempted from the record check requirements.

Your organization should consult a knowledgeable attorney to review your policies regarding use of records for applicant screening. You should ask for a review of your policies in the light of federal and state employment law, volunteer screening and liability laws, and requirements for record checks for individuals who staff programs for your service recipients.

DEVELOP PROCEDURES FOR CHECKING RECORDS

Criminal history records, child abuse registry, motor vehicle and credit bureau records each have specific legal and procedural requirements to obtain access for screening purposes. In this section we will discuss the specific requirements for each.

Consent Form

Applicants have a privacy interest in the kinds of records that organizations might want to access for screening purposes. To ensure that applicants are aware that the organization will check these records as a condition of placement, the organization should have the applicant sign a consent form.

The organization should have a standard consent form that informs applicants that the organization will verify information included on the application form, check records and conduct investigations as indicated. The form should also state that applicants' signature on the consent form waives any rights they may have to bring action for defamation, invasion of privacy or any similar cause against the organization or anyone contacted by the organization.

Consent

Ordinarily, you may be able to obtain legal access to criminal history records, child abuse registries, driving records and credit bureaus *only with the applicant's consent.*

In some instances, a copy of this form will be required by the custodians of the requested records prior to release of the information. It is possible that agencies maintaining official records, e.g., criminal history records, child abuse registries, and driving records, will have their own forms that the organization is required to submit to receive information. In such cases, the organization may obtain general consent at the time the application is submitted.

If the applicant is selected for further screening, he or she can be asked to complete the official forms at a later date. Having individuals complete unnecessary forms may create ill will in those not selected. On the other hand, having applicants return to complete additional forms can be used as a demonstration that the screening process is advancing. It can also be a test of the applicant's motivation to serve in the organization.

CRIMINAL HISTORY RECORDS

Popular television shows make it seem very simple to retrieve criminal history information. Just take the fingerprints, fax them to the FBI and in a few minutes, you have a complete criminal history—with mug shot—on a computer screen in front of you. And—all of the bad guys are in the computer.

In this imaginary world of television, every law enforcement agency enters its complete records in a central computer system—a computer system easily accessible to every other law enforcement agency. Unfortunately, the real world does not operate this way. The remainder of this section discusses the real world of criminal history background checks.

Sources of Criminal History Records

When an individual is arrested and charged with a crime, customary law enforcement procedures are to record the individual's fingerprints and to photograph or take

Definitions for Criminal Record Checks

To use criminal history records effectively, you must first understand the concepts and terminology used.

- ❑ **Arrest information** - A record that includes only information that a person was arrested; does not include information about the disposition of the arrest.
- ❑ **Conviction information** - record indicating that the subject not only was arrested, but that the arrest resulted in a guilty verdict.
- ❑ **Criminal history** - Records maintained by any criminal justice agency indicating that a person had been arrested, convicted, sentenced, or placed in a correctional program.
- ❑ **Fingerprint check** - A search using fingerprints to positively identify the subject of a search; may be either state or nationwide in scope. Under federal law FBI checks for employment and licensing purposes must be based upon fingerprints.
- ❑ **Name check** - A search conducted at the state level to identify if the subject has been arrested or convicted of a crime within that state. Identification is usually based upon name, date of birth, place of birth, social security number, and most recent mailing address.
- ❑ **National record check** - A search conducted through the FBI using fingerprints to identify the individual.
- ❑ **NCIC** - National Crime Information Center is an automated telecommunications system, maintained by the Federal Bureau of Investigation, containing databases on missing persons, wanted persons, and stolen vehicles.
- ❑ **State record check** - A search conducted through the state criminal justice records center; may use either fingerprints or name to identify subjects.
- ❑ **Triple I file** - The Interstate Identification Index is an automated telecommunications system maintained by the FBI. It includes all computerized criminal records files maintained by participating states. It serves as an "index-pointer" by identifying all of the states in which the subject has a criminal record. Once the state has been identified, the requester then obtains the complete records from those states.

mug shots of the alleged criminal. Usually the arresting agency retains these along with information about the criminal allegations in their records and sends copies to the state's criminal history repository (see the list at the end of this chapter) and the FBI. At this stage, these records are "arrest information" and do not include information about the disposition of the charges.

After a case has been resolved and the charges dropped or the individual has been adjudicated and either acquitted or sentenced, additional information from the courts is supposed to be added to the arrest records with both the state and FBI. This "conviction

information" explains the outcome of the case. Later, information from the corrections department is added, giving the current status of the individual—in prison, on probation, or on parole. After the sentence is completed, the record should be updated to indicate the final outcome of the case. Unfortunately, it does not always happen this way, leading to inaccurate and incomplete records.

To improve the accuracy of criminal history records, the FBI is improving its *Triple I* system. When completed, each state will be responsible for its own automated system which can be accessed for identification purposes by other law enforcement and criminal justice system agencies. If a person has a criminal history record, the states in which there is a record will be identified, and the inquiring agency will contact those states directly.

Accessing Criminal History Records

Most states follow a procedure similar to the one established in the *National Child Protection Act of 1993* which is likely to become uniform over the next several years. Under the provisions of the *Act*, for a national criminal history record check, the applicant needs to provide a set of fingerprints and sign a statement giving permission to conduct the record check. This statement needs to include the applicant's name, address and date of birth. It needs to either claim that the applicant has not been convicted of a crime, or to give the particulars of any criminal convictions. The statement also needs to notify the applicant that a criminal history record check would be requested and that there are appeal rights for adverse information the applicant feels is erroneous.

Access: To learn how to access criminal history records in your state, contact the agency listed at the end of this chapter.

CHILD ABUSE REGISTRIES

Child abuse registries are files maintained by state social services and child welfare agencies containing allegations of child abuse. They were developed to help investigate and track child abuse cases. Their focus is on intrafamilial child abuse cases and may contain information on allegations that have not been substantiated.

Some states permit their child abuse registry to be used as an additional screening tool. Some states limit the use of child abuse registry information to screen applicants for child care and foster-care licensing; other states limit use to just the investigation and substantiation of child abuse cases.

Access: To determine the accessibility of child abuse registries in your state, contact the child protective services agency listed at the end of this chapter.

DRIVING RECORDS

Checking the driving records of applicants for positions which require driving is a reasonable risk management procedure. Driving records are maintained by the Department of Motor Vehicles (DMV) in each state to keep track of traffic violations and vehicle accidents.

Some organizations find that the easiest way to access driver records is to give their insurance companies the applicants' driver information and have the insurance compa-

National Child Protection Act of 1993

The purpose of the *National Child Protection Act of 1993* is to encourage states to improve the quality of their criminal history and child abuse records. The Act was passed in October 1993 and amended in the *Crime Control Act of 1994*.

- *Requires states to submit "child abuse crime information" to, or index such information in the national criminal history background system maintained by the FBI. A state's reporting all felonies and serious misdemeanors to the FBI will satisfy this requirement of the Act.*
- *Mandates that the U.S. Attorney General establish timetables for each state's criminal history records system to reach milestones for improvement and completeness.*
- *Authorizes a state to establish procedures requiring organizations serving youth, the elderly and individuals with disabilities to request a nationwide criminal history background check on prospective employees and volunteers. 31 states and the District of Columbia have laws mandating some individuals working with children to undergo criminal history background checks. The Act expands this to the elderly and individuals with disabilities and encourages criminal history checks for a more uniform, but broader, cross-section of employees and volunteers.*
- *Provides access to the National Criminal History Records system maintained by the FBI in order to perform criminal history record checks. Access is limited to the states in which permissive legislation or regulations have been established.*
- *Establishes minimum procedural safeguards for conducting criminal history record checks. Procedures require checks to be based upon fingerprints; the agency checking the records must attempt to obtain disposition data; the actual record cannot be conveyed to the seeking organization but a statement must be provided by the state agency indicating whether or not the individual has been convicted of or is under pending indictment for a crime that bears upon the individual's fitness for taking care of children; and, the individual authorizes the check and signs a statement that he or she has never been convicted of a crime or if he or she has been convicted of a crime, lists the particulars of that crime on the form requesting the criminal history background check.*
- *Places responsibility on states to define crimes that bear upon the individual's fitness to work with children, the elderly and individuals with disabilities.*
- *Places responsibility on the states to identify the positions that will require criminal history background checks. Requirements for criminal history background checks will vary from state to state.*
- *Shields organizations from liability "solely for failure to conduct a criminal background check..." The Act allows organizations to use other kinds of child abuse prevention strategies so that failure to conduct a criminal history record check could not be used as a sole reason for liability.*
- *Limits the cost of criminal history record checks so that "fees to nonprofit entities for background checks do not discourage volunteers from participating in child care programs." Amendments to the Act limit the fee that can be charged by the states to \$18 and those charged by the FBI to \$18 or a total of \$36. The amendments also permit some federal funds to be used to offset some or all of this cost.*

nies do the DMV record checks. Other organizations perform their own DMV checks. If the individual is newly licensed in your state, you should also check with the DMV in other states in which he or she was licensed.

Access: If your organization needs to perform its own checks of driving records, contact the state Department Of Motor Vehicles or other similarly named agency for instructions.

CREDIT BUREAU RECORDS

Credit bureaus are private organizations which collect vast amounts of financial information about individuals. This information comes from financial institutions as well as other business enterprises with which the individual has financial obligations or transactions. There are three major credit bureaus: Trans-Union, TRW and Equifax.

Access: The release of credit bureau information is governed by the federal *Fair Credit Reporting Act*.

CONFIDENTIALITY SAFEGUARDS

The organization should have written policies defining who has access, how the information should be stored, the length of time it will be maintained and instructions for disposing of the confidential files.

- Only individuals who are responsible for deciding who will be selected should have access to this information.
- Information retained by the organization should be kept in controlled files. The organization should have a record retention policy limiting the length of time these records will be retained by the organization before being discarded. This policy should be reviewed by your attorney to ensure that it is in compliance with state and federal law.
- When your organization disposes of these records, the disposal process should be secure—shredding, tearing, burning—so that the information in the files cannot be reconstructed.

Information contained in these records should not be the subject of general discussions. Staff should be subject to discipline or termination for violating the confidentiality of applicants' files.

Organizations that use individuals' records for screening purposes have a legal responsibility to safeguard the information. Failure to maintain the confidentiality of this information could result in civil judgements for invasion of privacy.

PAYMENT OF FEES

Virtually all of the information sources discussed in this chapter require payment of a fee to receive information. Some fees are minimal, such as for driving record checks—usually less than \$5.00. Other fees can be substantially higher, such as the FBI fee for a national criminal history record check using fingerprints at \$24.00 (\$18.00 for nonprofit organizations). Organizations that establish screening requirements for using these databases must also set policies for who will pay for the record checks.

For applicants who will receive a salary, and thereby have an economic stake in having the record checks performed, it may be reasonable for the organization to ask the applicant to pay the cost of the background checks. Since this is a final stage in the selection process thereby minimizing the number of background checks necessary, the organization could also just as reasonably assume the costs of the background checks for their employees.

For applicants who will not receive payment for their services, the cost issues becomes more sensitive. Applicants may resist paying for their own record checks using the following rationale: "First they [your organization] want me to work for no pay and then they actually want to charge me for that privilege? They can get lost!" To overcome this kind of resistance, the organization may need to find ways to pay the cost for volunteer screening as another operating expense.

Sometimes, it may be possible to get a third party to pay for volunteer screening; for example, an Optimist Club pays for the cost of screening coaches for the soccer team they sponsor. In some cases, the cost of screening can be spread among the beneficiaries of the screening process; for example, by increasing the fee for belonging to a youth group.

EVALUATING RECORD INFORMATION

Assuming that your organization has been successful at gaining access to criminal history, child abuse, driving and/or credit bureau records, the next decision is determining how the information can be used by your organization. Consider the following examples:

- The background check on an applicant for volunteer work with children shows that twenty years earlier he had been arrested for child molestation. There is no disposition data in the record and no indication of other arrests. *Do you accept the applicant and assign him to work with children?*
- You have checked the driving records of a 75-year-old volunteer with the *Meals on Wheels* program and discovered that she has numerous traffic violations, including some for serious offenses that resulted in collisions. She still has insurance and her driver's license but is close to the maximum number of points for continuing to drive. *What action do you take?*
- An applicant for treasurer of your organization was convicted of burglary when he was in college. He has been active on your board of directors for ten years and the criminal conviction was not discovered until the bonding company came across the information during its background check. *Can you ignore the information and allow the individual to continue to handle your organization's funds?*

These are just a few examples of the kinds of information you may discover, and the kinds of decisions you may be called upon to make if your organization decides to access criminal history, child abuse, driving and credit bureau records. Each organization should consider its needs and develop policies to be followed consistently in each case.

The policies need to identify automatic disqualifiers, establish rating criteria, define judgement factors and permit the information to be examined in the context of organi-

zational requirements and other life-experience factors of the applicants. Each of these factors is discussed in the following sections.

Automatic Disqualifiers

There are some acts that are sufficiently serious that any reasonable person could conclude that the individual should not be allowed to work in positions which could permit a repetition of the act. For examples, if an applicant had a conviction for vehicular homicide while under the influence of drugs or alcohol, most individuals might feel that the individual should not be placed as a driver; or, a person with a history of assaultive behavior should not be placed in position requiring work with vulnerable individuals. In some states these disqualifiers are defined through state statutes.

According to the American Bar Association,

Some states have rather extensive lists of relevant crimes about which information may be released. For example, Washington permits organizations providing services to children under the age of 16 to have access to a prospective employee's record of convictions for various degrees of murder, kidnapping, assault, rape, robbery, arson, burglary, manslaughter, extortion, indecent liberties, incest, vehicular homicide, promoting prostitution, assault, communication with a minor, unlawful imprisonment, exploitation of minors, criminal mistreatment, child abuse or neglect, custodial interference, harassment, child molestation, sexual misconduct, patronizing a juvenile prostitute, child abandonment, promoting pornography, selling or distributing erotic material to a minor, custodial assault, violation of child abuse restraining order, child buying or selling, and prostitution. (Dennis and Davis, 1991)

Some laws on the federal level establish specific offenses as potential disqualifiers. The federal *Crime Control Act of 1990* (Public Law 101-647) established screening criteria for federal employees working with children. "Prior convictions for sex crimes, any crimes involving child victims, and felony drug offenses are grounds for denial of employment or dismissal."

Your insurance companies or bonding agents may also specify automatic disqualifiers for applicants for some positions. When you establish your screening policies, you should consult your insurers. They should be able to tell you if there are any specific factors that are listed in your insurance arrangements that would disqualify an individual or exclude your organization from coverage for that individual's actions.

Private Screening Services

With businesses increasingly using various sources of information, any number of security firms offer background screening services for a fee. These organizations confirm criminal histories, previous employers, educational attainment, driving records, credit checks, and names. If your organization is considering using one of these security firms to perform applicant screening, be sure that the firm you use is knowledgeable about the legal and ethical restrictions governing the information being collected and disseminated.

Rating Criteria

There is no such thing as a perfect applicant. This fact requires that you balance the strengths and weaknesses of applicants and arrive at a placement decision. Let's assume that your organization favors an individual who appears to have all of the qualifications that you are looking for, but also has some negative information show up dur-

ing a record check. How should that information be used by the organization to assist in the decision to accept or reject the applicant?

Your organization's screening policies will need to rely upon some degree of judgement due to the inadequacies of the record systems being checked.

As previously stated, applicants need to be screened on their qualifications and ability to perform the specific tasks listed in the position description. Individuals who are not qualified and cannot perform may be eliminated from consideration for positions for which they are not qualified. Most organizations are adept at rating one individual's experience and comparing it with another's.

Some organizations have more difficulty evaluating the relevance of adverse information that is less than an automatic disqualifier. This is where judgement needs to be applied.

Judgement Factors

The organization should consider three factors as it develops policies for responding to adverse information found through record checking: completeness of the information, context, and position requirements.

1. **Completeness of the information.** Arrest information without dispositions ordinarily is not legally sufficient to disqualify an applicant for paid employment. Some organizations have set policies that a record listing two arrests without disposition information is enough to disqualify an applicant for volunteer positions. Their rationale is that one arrest might have been a mistake, but the odds that two arrests were both mistakes are much lower. When the organization is able to obtain information on the dispositions of the arrests, it clearly has a sounder basis for making a decision. When negative information is revealed during a record check, the applicant should be contacted and the information clarified. Organizations need to be prepared, however, to respond to incomplete information because it may be all that is available.
2. **Context.** How long ago was the offense committed? What has the individual been doing with his life since the criminal act was alleged to have occurred? What was happening in the applicant's life when the infraction occurred? Is the incident part of a larger pattern of antisocial behavior, or was it an aberration? The answers to these questions could have a bearing on the acceptability of a staff person. If negative information is contained in an individual's records, when the applicant has lived in the same community for a while and is well-known, checking current references and lifestyle information could still justify placement.
3. **Position requirements.** The organization must determine the relevance of the specific information to the requirements of the position being filled. If the *Meals on Wheels* volunteer was going to work in the office filing records, her driving records may be irrelevant. The man with a twenty-year old arrest record for child molestation, on the other hand, could be considered an unwarranted risk for some positions working with children since there is no known cure for pedophilic tendencies. The applicant for treasurer may be out of luck if the organization's policy is that the treasurer must be bonded and the bonding company refuses to bond the individual's performance in that position.

By considering these three factors when your organization develops its policies concerning adverse information and its use in applicant screening, you will ensure that the policies you formulate will be fair and at the same time you will protect your organization's interest in keeping out the "bad apples."

RESOLVING INCONSISTENCIES AND INACCURACIES

One way to resolve inconsistencies in the information you receive from record checking is to place the responsibility on the applicant to have the record corrected. You can tell applicants that you cannot accept their applications for placement due to negative information you received. If they feel that the information is in error, it is their responsibility to contact the agency that provided the information, have the record corrected, and obtain written verification that it had been an error. When you receive the written verification from the reporting agency, then you can consider the application for placement. Until that time, you have no choice but to reject their application.

Record checks tools

1. State Child Protective Agencies
2. State Criminal History Repositories
3. Sample Authorization to Check Criminal Record, American Camping Association
4. Affidavit of Good Moral Character, Florida Department of Health and Rehabilitative Services
5. What Constitutes an Unacceptable MVR?, American Red Cross
6. Motor Vehicle Record Evaluation Form, American Red Cross
7. Hertz Driver Rejection Criteria

NOTE: The forms in this book are for illustrative purposes only. They are based on forms that have been used in the field. They provide "real life" examples, rather than a recommended practice.

The authoring organizations provided forms that they had designed for specific uses. The forms may not be appropriate, or complete, for other purposes or types of organizations. Copying the material may also be restricted by copyright laws.

State Child Protective Agencies

Alabama

Alabama Department of Human Resources
Division of Family and Children's Services
Office of Protective Services
64 North Union Street
Montgomery, AL 36130-1801

Alaska

Department of Health and Social Services
Division of Family and Youth Services
Box H-05, Juneau, AK 99811

American Samoa

Government of the American Samoa
Office of the Attorney General
Pago Pago, AS 96799

Arizona

Department of Economic Security Administration
for Children, Youth and Families
PO Box 6123
Site COE 940A
Phoenix, AZ 85005

Arkansas

Arkansas Department of Human Services
Division of Children and Family Services
PO Box 1437
Little Rock, AR 72203

California

Office for Child Abuse Prevention
Department of Social Services
714-744 P Street, Room 950
Sacramento, CA 95814

Colorado

Department of Social Services Central Registry
PO Box 181000
Denver, CO 80218-0899

Connecticut

Connecticut Department of Children and Youth
Services
Division of Child and Protective Services
170 Sigourney Street
Hartford, CT 06105

Delaware

Delaware Department of Services for Children,
Youth and Their Families
Division of Child Protective Services
330 East 30th Street
Wilmington, DE 19802

District of Columbia

District of Columbia Department of Human
Services
Commission on Social Services
Family Services Administration
Child and Family Services Division
500 First Street, N.W.
Washington, DC 20001

Florida

Florida Child Abuse Registry
1317 Winewood Boulevard
Tallahassee, FL 32301

Georgia

Georgia Department of Human Resources
Division of Family and Children Services
878 Peachtree Street, N.W.
Atlanta, GA 30309

Guam

Department of Public Health and Social Services
Child Welfare Services
Child Protective Services
PO Box 2816
Agana, GU 96910

Hawaii

Department of Social Services and Housing
Public Welfare Division
Family and Children's Services
PO Box 339
Honolulu, HI 96809

Idaho

Department of Health and Welfare
Field Operations Bureau of Social Services and
Child Protection
450 West State, Tenth Floor
Boise, ID 83720

Illinois

Illinois Department of Children and Family
Services
Station 75
State Administrative Offices
406 East Monroe Street
Springfield, IL 62701

Indiana

Indiana Department of Public Welfare—Child
Abuse and Neglect
Division of Child Welfare—Social Services
141 South Meridian Street
Sixth Floor
Indianapolis, IN 46225

Iowa

Iowa Department of Human Services
Division of Social Services
Central Child Abuse Registry
Hoover State Office Building
Fifth Floor
Des Moines, IA 50319

Kansas

Kansas Department of Social and Rehabilitation
Services
Division of Social Services
Child Protection and Family Services Section
Smith-Wilson Building
2700 West Sixth Street
Topeka, KS 66606

Kentucky

Kentucky Cabinet of Human Resources
Division of Family Services
Children and Youth Services Branch
275 East Main Street
Frankfort, KY 40621

Louisiana

Louisiana Department of Health and Human
Resources
Office of Human Development
Division of Children, Youth, and Family Services
PO Box 3318
Baton Rouge, LA 70821

Maine

Maine Department of Human Services
Child Protective Services
State House, Station 11
Augusta, ME 04333

Maryland

Maryland Department of Human Resources
Social Services Administration
Saratoga State Center
311 West Saratoga Street
Baltimore, MD 21201

Massachusetts

Massachusetts Department of Social Services
Protective Services
150 Causeway Street
Eleventh Floor
Boston, MA 02114

Michigan

Michigan Department of Social Services
Office of Children and Youth Services
Protective Services Division
300 South Capitol Avenue
Ninth Floor
Lansing, MI 48926

Minnesota

Minnesota Department of Human Services
Protective Services Division
Centennial Office Building
St Paul, MN 55155

Mississippi

Mississippi Department of Public Welfare
Bureau of Family and Children's Services
Protection Department
PO Box 352
Jackson, MS 39205

Missouri

Missouri Child Abuse and Neglect Hotline
Department of Social Service
Division of Family Services
PO Box 88
Broadway Building
Jefferson City, MO 65103

Montana

Department of Family Services
Child Protective Services
PO Box 8005
Helena, MT 59604

Nebraska

Nebraska Department of Social Services
Human Services Division
301 Centennial Mall South
PO Box 95026
Lincoln, NE 68509

Nevada

Department of Human Resources
Division of Welfare
2527 North Carson Street
Carson City, NV 89710

New Hampshire

New Hampshire Department of Health and Welfare
Division for Children and Youth Services
6 Hazen Drive
Concord, NH 03301-6522

New Jersey

New Jersey Division of Youth and Family Services
PO Box CN717
One South Montgomery Street
Trenton, NJ 08625

New Mexico

New Mexico Department of Human Services
Social Services Division
PO box 2348
Santa Fe, NM 87504

New York

New York State Department of Social Services
Division of Family and Children Services
State Central Register of Child Abuse and Maltreatment
40 North Pearl Street
Albany, NY 12243

North Carolina

North Carolina Department of Human Resources
Division of Social Services
Child Protective Services
325 North Salisbury Street
Raleigh, NC 27611

North Dakota

North Dakota Department of Human Services
Division of Child and Family Services
Child Abuse and Neglect Program
State Capitol
Bismarck, ND 58505

Ohio

Ohio Department of Human Services
Bureau of Children's Protective Services
30 East Broad Street
Columbus, OH 43266-0423

Oklahoma

Oklahoma Department of Human Services
Division of Children and Youth Services
Child Abuse/Neglect Section
PO Box 25352
Oklahoma City, OK 73125

Oregon

Department of Human Resources
Children's Services Division
Child Protective Services
198 Commercial Street, S.E.
Salem, OR 97310

Pennsylvania

Pennsylvania Department of Public Welfare
Office of Children, Youth and Families
Child Line and Abuse Registry
Lanco Lodge, PO Box 2675
Harrisburg, PA 17105

Puerto Rico

Puerto Rico Department of Social Services
Services to Family With Children
PO Box 11398
Fernandez Juncos Station
Santurez, PR 00910

Rhode Island

Rhode Island Department for Children and Their Families
Division of Child Protective Services
610 Mt. Pleasant Avenue
Bldg. 9
Providence, RI 02908

South Carolina

South Carolina Department of Social Services
1535 Confederate Avenue
PO Box 1520
Columbia, SC 29202-1520

South Dakota

Department of Social Services
Child Protection Services
Richard F. Knep Building
700 Governors Drive
Pierre, SD 57501

Tennessee

Tennessee Department of Human Services
Child Protective Services
Citizen Bank Plaza
400 Deadrick Street
Nashville, TN 37219

Texas

Texas Department of Human Services
Protective Services for Families and Children Branch
PO Box 2960, MC 537-W
Austin, TX 78769

Utah

Department of Social Services
Division of Family Services
PO Box 45500
Salt Lake City, UT 84110

Vermont

Vermont Department of Social and Rehabilitative Services
Division of Social Services
103 South Main Street
Waterbury, VT 05676

Virgin Islands

Virgin Islands Department of Human Services
Division of Social Services
PO Box 550
Charlotte Amalie
St. Thomas, VI 00801

Virginia

Commonwealth of Virginia
Department of Social Services
Bureau of Child Protective Services
Blair Building
8007 Discovery Drive
Richmond, VA 23229-8699

Washington

Department of Social and Health Services
Division of Children and Family Services
Child Protective Services
Mail Stop OB 41-D
Olympia, WA 98504

West Virginia

West Virginia Department of Human Services
Division of Social Services
Child Protective Services
State Office Building
1900 Washington Street East
Charleston, WV 25305

Wisconsin

Wisconsin Department of Health and Social
Services
Division of Community Services
Bureau for Children, Youth and Families
1 West Wilson Street
Madison, WI 53707

Wyoming

Department of Health and Social Services
Division of Public Assistance and Social Services
Hathaway Building
Cheyenne, WY 82002

State Criminal History Repositories

Alabama

Alabama Bureau of Investigation
Department of Public Safety
P.O. Box 1511
Montgomery, AL 36192-0501
(205) 242-4372

Alaska

Administrative Services
Alaska Department of Public Safety
P.O. Box 111200
Juneau, AK 99811
(907) 465-4336

Arizona

ACJIS Division
Arizona Department of Public Safety
P.O. Box 6638
Phoenix, AZ 85005-6638
(602) 223-2388

Arkansas

Arkansas Crime Information Center
One Capitol Mall
Little Rock, AR 72201
(501) 682-2222

California

Bureau of Criminal Identification
California Department of Justice
P.O. Box 903417
Sacramento, CA 94203-4170
(916) 739-5144

Colorado

Crime Information Center
Colorado Bureau of Investigation
690 Kipling Street #3000
Denver, CO 80215-5844
(303) 239-4224

Connecticut

Connecticut State Police
Bureau of Identification
Department of Public Safety
294 Colony Street
Meriden, CT 06450
(203) 238-6151

Delaware

State Bureau of Identification
Delaware State Police
P.O. Box 430
Dover, DE 19903
(302) 739-5872

District of Columbia

Identification and Records Division
Metropolitan Police Department
300 Indiana Avenue NW Room 2100
Washington, DC 20001
(202) 727-4432

Florida

Division of Criminal Justice Information Systems
Florida Department of Law Enforcement
P.O. Box 1489
Tallahassee, FL 32302
(904) 488-3961

Georgia

Crime Information Center
Georgia Bureau of Investigation
P.O. Box 370748
Decatur, GA 20037-0748
(404) 244-2601

Hawaii

Hawaii Criminal Justice Data Center
Department of the Attorney General
Kekuanao's Building, Room 101
465 South King Street
Honolulu, HI 96813
(808) 548-2090

Idaho

Bureau of Criminal Identification
Idaho Department of Law Enforcement
6064 Corporal Lane
Boise, ID 83704
(208) 327-7130

Illinois

Bureau of Identification
Division of Forensic Services and Identification
Illinois State Police
260 North Chicago Street
Joliet, IL 60431-1060
(815) 740-5160

Indiana

Indian State Police
Records Division
100 North Senate Avenue
Indiana Government Center North, Room 312
Indianapolis, IN 46204
(371) 232-8262

Iowa

Bureau of Identification
Division of Criminal Investigation
Iowa Department of Public Safety
Wallace State Office Building
Des Moines, IA 50319
(515) 281-5138

Kansas

Kansas Bureau of Investigation
1620 Tyler Street
Topeka, KS 66612
(913) 232-6000

Kentucky

Information Services Branch
Kentucky State Police
1250 Louisville Road
Frankfort, KY 40601
(502) 227-8700

Louisiana

Bureau of Criminal Identification
Office of State Police
P.O. Box 66614
Baton Rouge, LA 70896
(504) 925-6095

Maine

Identification Division
State Bureau of Identification
Maine State Police
36 Hospital Street
Augusta, ME 04330
(207) 624-7009

Maryland

Data Services Division
Department of Public Safety and Correctional
Services
P.O. Box 5743
Pikesville, MD 21208
(410) 764-4200

Massachusetts

Criminal History Systems Board
1010 Commonwealth Avenue
Boston, MA 02215
(617) 727-0090

Michigan

Central Records Division
Michigan Department of State Police
7150 Harris Drive
Lansing, MI 48913
(517) 322-1951

Minnesota

Criminal Justice Information System
Bureau of Criminal Apprehension
Department of Public Safety
1246 University Avenue
St. Paul, MN 55104
(612) 642-0687

Mississippi

Records and Identification Division
Criminal Investigation Bureau
Department of Public Safety
P.O. Box 958
Jackson, MS 39205
(601) 987-1564

Missouri

Criminal Records Division
Missouri State Highway Patrol
P.O. Box 568
Jefferson City, MO 65102
(314) 751-3313

Montana

Bureau of Identification
Montana Department of Justice
303 North Roberts, Room 374
Helena, MT 59620
(406) 444-3625

Nebraska

Criminal Identification Division
Nebraska State Patrol
P.O. Box 94907
Lincoln, NE 68509-4907
(402) 471-4545

Nevada

Nevada Highway Patrol
Criminal Information Services
555 Wright Way
Carson City, NV 89711-0585
(702) 687-5713

New Hampshire

New Hampshire State Police
James H. Hayes Safety Building
10 Hazen Drive
Concord, NH 03305
(603) 271-2535

New Jersey

Records and Identification Section
New Jersey State Police
P.O. Box 7068
West Trenton, NJ 08625-0068
(609) 882-2000

New Mexico

Technical and Emergency Support Division
Department of Public Safety
P.O. Box 1628
Santa Fe, NM 87504-1628
(505) 827-9181

North Carolina

Division of Criminal Information
North Carolina Bureau of Investigation
407 North Blount Street
Raleigh, NC 27601-1009
(919) 733-3171

New York

Division of Criminal Justice Services
Stuyvesant Plaza
Executive Park Tower
Albany, NY 12203
(518) 457-2351

North Dakota

Information Services Section
Bureau of Criminal Investigation
P.O. Box 1054
Bismarck, ND 58502
(701) 221-6180

Ohio

Identification Division
Ohio Bureau of Criminal Identification and Investigation
P.O. Box 365
London, OH 43140
(614) 466-8204

Oklahoma

Identification Division
Oklahoma Bureau of Investigation
P.O. Box 11497
Oklahoma City, OK 73136
(405) 848-6724

Oregon

Oregon State Police
Identification Services Section
3772 Portland Road NE
Salem, OR 97303
(503) 378-3070

Pennsylvania

Bureau of Records and Information Services
Pennsylvania State Police
1800 Elmerton Avenue
Harrisburg, PA 17110
(717) 783-5588

Rhode Island

Bureau of Criminal Identification
Department of the Attorney General
72 Pine Street
Providence, RI 02903
(401) 421-5268

South Carolina

South Carolina Criminal Records Division
South Carolina Law Enforcement Division
P.O. Box 21398
Columbia, SC 29221
(803) 737-9070

South Dakota

Division of Criminal Investigation
Office of the Attorney General
500 East Capitol Avenue
Pierre, SD 57501-5070
(605) 773-3331

Tennessee

Tennessee Bureau of Investigation
P.O. Box 100940
Nashville, TN 37244-0940
(615) 741-0430

Texas

Crime Records Division
Texas Department of Public Safety
P.O. Box 4143
Austin, TX 78765
(512) 465-2077

Utah

Bureau of Criminal Identification
Utah Department of Public Safety
4501 South 2700 West
Salt Lake City, UT 84119
(801) 965-4395

Vermont

Vermont Criminal Information Center
Department of Public Safety
P.O. Box 189
Waterbury, VT 05676
(802) 244-8727

Virginia

Records Management Division
Virginia State Police
P.O. Box 27472
Richmond, VA 23261-7472
(804) 674-2021

Washington

Criminal Records Division
Washington State ID System
QE-02
Olympia, WA 98504-0000
(206) 753-6858

West Virginia

Criminal Records Division
West Virginia State Police
725 Jefferson Road
South Charleston, WV 25309
(304) 746-2177

Wisconsin

Crime Information Bureau
Wisconsin Department of Justice
P.O. Box 2718
Madison, WI 53701
(608) 266-7314

Wyoming

Office of the Attorney General
Division of Criminal Investigation
316 West 22nd Street
Cheyenne, WY 82002-0001
(307) 777-7523

Puerto Rico

Technical Services Bureau
Police of Puerto Rico
G.P.O. Box 70166
San Juan, PR 00936
(809) 781-3470

Virgin Islands

Virgin Islands Police Department
Criminal Justice Complex
Charlotte, Amalie
St. Thomas, VI 00802
(809) 774-2211

Sample

For Illustration Only

Sample Authorization to Check Criminal Record

I, _____ (name) hereby authorize _____
(name of agency/organization) to obtain information pertaining to any charges and/or convictions
I may have had for federal and state criminal law violations. This information will include but not
be limited to allegations and convictions for crimes committed upon minors and will be gathered
from any law-enforcement agency of this state or any state or federal government, to the extent
permitted by state and federal law.

Signed _____ Date _____

Social Security or Identification Number _____

Driver's License Number _____

State of Issuance _____ Expiration Date _____

Name of Agency _____

Authorized Agency Supervisor _____

Johnson, Becca Cowan. 1982. "Sample Authorization to Check Criminal Record" from *For Their Sake: Recognizing, Responding to, and Reporting Child Abuse*. Martinsville, IN: American Camping Association, Inc. Reproduced by permission.

AFFIDAVIT OF GOOD MORAL CHARACTER

STATE OF FLORIDA

COUNTY OF _____

Before me this day personally appeared _____ who, being duly sworn, deposes and says:

As an applicant for employment as a caretaker with _____, I hereby attest to meeting the requirements for employment, that I am of good moral character, that I have not been found guilty of, or entered a plea of nolo contendere or guilty to, any offense prohibited under any of the following provisions of the Florida Statutes or under any similar statute of another jurisdiction. I have not had a finding of delinquency or entered a plea of nolo contendere or guilty to a petition alleging delinquency pursuant to Part II, Chapter 39, Florida Statutes, or similar statutes of other jurisdictions, for any of the following acts. I understand I must acknowledge the existence of any criminal or delinquency record regardless of whether I was adjudged guilty by the court and regardless of whether or not those records have been sealed or expunged.

Section 415.111	abuse, neglect or exploitation of aged or disabled persons
Section 741.30	domestic violence
Section 782.04	murder
Section 782.07	manslaughter
Section 782.071	vehicular homicide
Section 782.09	killing of an unborn child by injury to the mother
Section 784.011	assault, if the victim of the offense was a minor
Section 784.021	aggravated assault
Section 784.03	battery, if the victim of the offense was a minor
Section 784.045	aggravated battery
Section 787.01	kidnapping
Section 787.02	false imprisonment
Section 787.04	moving children from the state or concealing children contrary to court order
Section 794.011	sexual battery
Section 794.041	prohibited acts or persons in familiar or custodial authority
Chapter 796	prostitution
Section 798.02	lewd and lascivious behavior
Chapter 800	lewdness and indecent exposure
Section 806.01	arson
Section 812.13	robbery
Section 817.563	fraudulent sale of controlled substances, only if the offense was a felony
Section 826.04	incest
Section 827.03	aggravated child abuse
Section 827.04	child abuse
Section 827.05	negligent treatment of children
Section 827.071	sexual performance by a child
Chapter 847	obscene literature
Chapter 893	drug abuse prevention and control only if the offense was a felony or if any other person involved in the offense was a minor.

(continued)

I further attest that I have not been judicially determined to have committed abuse or neglect against a child as defined in s. 39.01, Florida Statutes; nor do I have a confirmed report of abuse, neglect or exploitation as defined in s. 415.102, or abuse or neglect as defined in s. 415.503 which has been uncontested or upheld pursuant to the procedures provided in s. 415.103 or s. 415.504, Florida Statutes.

Under the penalty of perjury, I attest that I have read the foregoing, and the facts alleged are true to the best of my knowledge and belief.

Affiant

OR

To the best of my knowledge and belief, my record may contain one or more of the foregoing disqualifying acts or offenses.

Affiant

Sworn to and subscribed before me this ____ day of _____ 19__.

Notary Public
State of Florida

My commission expires

Verification or witness signature to affiant's identification

WHAT CONSTITUTES AN UNACCEPTABLE MVR?

To simplify the process of determining what is an unacceptable motor vehicle record (MVR), categories of violations are listed, and a 10-point system for evaluating a driver's record has been established. This evaluation should be made using the driver's records for the most recent 3 years.

VIOLATION	POINTS
A. Driving without a license (i.e., never had a valid license vs. "left at home")	5
B. Driving while license is suspended or revoked	5
C. Driving while intoxicated (DWI)—	
(1) In company-owned vehicle	10
(2) In personal auto	5
D. Driving under influence of narcotic (DUIN)	
(1) In company-owned vehicle	10
(2) In personal auto	5
E. Any "serious" violations (e.g., reckless driving, endangering the lives of others, racing)	6
F. Any speeding violation from 1 to 10 mph over speed limit—	
(1) If operator is over 21 years old	2
(2) If operator is 21 years old or under	3
G. Any speeding violation from 11 to 20 mph over speed limit—	
(1) If operator is over 21 years old	4
(2) If operator is 21 years old or under	5
H. Any speeding violation 21 mph or more over speed limit—	
(1) If operator is over 21 years old	6
(2) If operator is 21 years old or under	7
I. Any "standard" moving violation (i.e., careless driving, speed too fast for condition but within normal limit, stop sign, lane crossover, failure to signal, failure to keep right, following too close)	2
J. Any chargeable "bodily injury" accident (BI)	4
K. Any chargeable "physical damage" accident (PD)	3

MVR information should be evaluated as follows:

- Total the points indicated for each driver.
- Any driver having 10 or more total points should be considered unacceptable.
- Assume that all accidents noted in (J) and (K) are "at fault" unless documentation to the contrary can be provided.
- If you are unable to distinguish between BI and PD accidents, assume they are BI occurrences.

MOTOR VEHICLE RECORD EVALUATION FORM

Name _____ Division _____
 Location _____ Date _____

INSTRUCTIONS

1. Evaluating the motor vehicle record is a primary step but not the only step in the initial evaluation of a prospective driver employee. The *Authorized Driver Application* (Form 6533) should also be used.
2. Use point evaluations on all driver applicants (volunteer or paid).
3. If a prospective driver has more than 6 points, as scored below, seriously examine his or her qualifications before considering hiring.

A. Age	Points
Under 25	2
25-55	0
Over 55	1

B. Work history (jobs started within last 5 years)	Points
None	0
1	1
2	2
More than 2	4

Any employment period of less than one year duration during the last five years will normally be assessed an additional 1 point.

C. Number of accidents (within last 3 years)	Points
None	0
1	1
2	2
3	5

D. Major moving violations (within last three years)	Points
Hit and run:	
Leaving the scene of an accident	6 each
Driving under the influence of alcohol or drugs	6 each
Any felony, homicide, or manslaughter involving use of motor vehicle	6 each
Racing or excessive speeds (20 mph over limits)	4 each
Reckless, negligent, or careless driving	4 each
License suspension or revocation	3 each
Speeding	2 each

E. Other moving violations (within last three years)	Points
None	0
1 or 2	1
3 and over	1 each

GRADING

Best	0-2
Average	3-4
Questionable	5-6
Poor	Over 6

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Driver Rejection Criteria

1. Have a suspended, revoked or expired or otherwise invalid driver's license.
2. Have been convicted of drunk driving in the past 72 months.
3. Were at fault in two or more accidents in the past 36 months.
4. Have acquired eight points on your driving record in the past 24 months.
5. Have three or more convictions for moving violations within the past 36 months.
6. Reckless disregard for life or property within the past 48 months.
7. DWI/DUI within the past 72 months.
8. Two or more charges from tickets within the past 36 months.
9. One or more accidents resulting in fatality or bodily injury.
10. Failure to report or leaving the scene of an accident within the past 48 months.
11. Operating a vehicle without insurance or a valid license within the past 48 months.
12. Permitting others to use vehicles without license or insurance within the past 48 months.
13. Possession of stolen vehicle or use of a vehicle to commit a crime within the past 48 months.
14. Suspension, cancellation or denial of a license within the state within the past 36 months.
15. Two or more incidents of failure to respond to fines.
16. Two incidents of insurance cancellations.



Other screening techniques

In addition to the applications, interviews, reference checking and use of criminal history and other records for screening applicants, a few community-serving organizations use other kinds of screening including drug and alcohol tests, psychological personality tests, and lie detector tests.

As with other kinds of screening, your organization needs to weigh the benefits received from the use of these techniques against their costs and the loss of privacy for the applicants. Virtually all of the screening techniques described in this chapter require special expertise to administer, thereby increasing their cost.

Psychological, chemical, and mechanical tests raise legal, ethical, and public relations issues.

The information acquired through some of these screening techniques is intensely personal and requires sacrifice of some personal privacy to obtain. The positions for which any of these techniques are used, therefore, should be those in which the relationship between the screening tool and the position are clearly established, for example drug and alcohol tests for drivers or psychological tests for individuals who apply to be foster parents.

The organization which employs these screening techniques must ensure that the files containing test information have closely controlled access. Only individuals who can interpret their significance and have a legitimate need to do so should have access to test results.

COMMERCIAL SCREENING SERVICES

The increase in concern about negligent hiring has created a demand for commercial screening services. These services offer a variety of pre-employment screening and testing protocols to organizations able to pay the cost for the service. While some offer a broad range of screening tools for an array of positions, others focus on specific types of positions. For example, some driver education companies have developed driver screening tests. These are designed to determine whether an individual has certain characteristics associated with reckless driving.

In this chapter, we identify only a few tools that are commercially administered. Omission of a tool or a company from this chapter reflects merely our inability to include everything; it should not be taken as a value judgment about quality or suitability for your circumstances.

Retention of a commercial screening service may be the best way for your organization to proceed. The advantage is strongest if a commercial provider offers a tool that is not otherwise available. If you are considering such an arrangement, a thorough investigation of the company and its services is highly advisable. Claims of effectiveness are

questionable unless accompanied by independent validation. You may want to contact several providers to compare costs and services. Checking with other organizations that use their services can also give you a measure of providers' sufficiency.

PERFORMANCE ASSESSMENT

When position descriptions specify responsibilities requiring physical abilities or special skills, applicants may be asked to demonstrate their ability to fulfill the position requirements. For example, if the position description absolutely requires lifting forty-pound bales of paper at a recycling center, you may ask applicants for that position to demonstrate their ability to handle a forty-pound weight. The measurement is objective and based upon the requirements of the position, therefore it is non-discriminatory if all applicants for the position are subjected to the same performance test.

When you are interviewing applicants for positions working with vulnerable populations, you may want to include a one hour observation period as part of your screening. During this time, the applicant would be asked to work or interact with some of the service recipients with whom he or she would be working if selected for the position. The applicant's interactions with clientele should be observed and some of the following factors noted.

Has realistic expectations of the capabilities of the clientele.

Demonstrates a sense of humor.

Exhibits interest, warmth, enthusiasm and patience.

Uses positive techniques to guide behavior.

Shows a willingness to participate in all kinds of activities and routines, including messy ones.

Comforts individuals who are distressed.

Supports the other staff.

Appears comfortable in the setting. (Adapted from Koralek 1992)

DRUG AND ALCOHOL TESTING

If considering using drug and alcohol testing, check your state laws and your employee or collective-bargaining contracts. In addition, the U.S. Department of Transportation has regulations mandating drug and alcohol testing of certain vehicle operators.

During the 1980's, under the leadership of the federal government, public concern heightened about the presence of drugs in the workplace. Many employers established drug and alcohol screening programs for their applicants. A recent survey conducted by William M. Mercer, Inc., a New York-based benefits consulting firm indicated that while many firms test job candidates for drug use, relatively few substance abusers are discovered, and the number that are has dropped somewhat in the past three years.

In most, if not all, areas, a nongovernmental organization can establish a policy mandating that applicants must pass drug and alcohol screenings. Such a policy gives the applicant the choice of taking and passing the test or not being accepted. Just as in other areas of

employment law, volunteers are not subject to many of the procedural safeguards that exist for paid employees.

When considering whether or not to conduct drug and alcohol screening, the organization should examine the specific risks it is trying to minimize. One factor might be the exposure to controlled substances which the position provides. A volunteer in a hospital, for example, could have more exposure to controlled substances than would a teacher's aide in a preschool program. Another factor to consider would be if the position description requires the operation of vehicles or machinery that could result in harm to others if operated when under the influence of drugs or alcohol.

PSYCHOLOGICAL TESTING

In this country we have a propensity for wanting to be scientific. The development and promotion of various psychological tests for a wide variety of diagnostic applications is one manifestation of our desire to be techno-sophisticated. Sometimes our reliance on science results in attempts to use psychological testing in ways that may misuse the measurement instrument.

Psychological tests used for pre-employment screening purport to measure personality traits, integrity, and vocational interests. As we are limiting our discussion to screening for risk reduction, we will focus our attention on tests that are often used in that context.

There are many tests that purport to measure *integrity*. Specific attributes that these tests measure include conscientiousness, reliability, dependability, carefulness, and responsibility. A recent study published in the *Journal of Applied Psychology* (Ones, Viswesvaran, and Schmidt, 1993) found that "integrity tests have substantial evidence of generalizable validity."

A few community-serving organizations are using psychological tests to screen staff. Most of these are organizations that work with children and use psychological tests to screen staff for abusive tendencies. The use of psychological testing for this kind of staff screening is not without its problems, however. The American Bar Association points out that many psychological tests are "general in nature and those tests that are child abuse specific were originally developed to assess abusive *parents*, not child care and youth-service workers" (ABA 1991).

Since the commonly used psychological tests were not designed to measure abusive tendencies of child- and youth-serving staff, the values of these tests for predicting abusive tendencies may be questionable at best. One possible reason for the lack of a reliable and valid profile for child abusers may be the complex interaction of multiple causation factors which contributes to the abuse (Finkelhor 1986).

An additional obstacle to the use of psychological tests is the need to use professionally trained personnel to administer the tests and interpret the results. Unless your organization has staff qualified to administer the specific tests to be used by your organization, outside psychologists must be retained—sometimes at considerable cost.

"There is no research evidence to suggest that clinicians using all the tools available can profile sexual offenders with sufficient validity and reliability."
(Murphy and Peters, 1994)

The following is a list of psychological tests often used to screen applicants. With each test is a description of how it is designed to be used as well as some of its limitations.

Minnesota Multiphasic Personality Inventory (MMPI)

This is the most frequently administered clinical test in the United States. There are two versions, the original MMPI and a newer version, the MMPI-2. The test provides information on 10 personality scales. Both the MMPI and MMPI-2 are able to be computer-scored and computer-interpreted, thereby facilitating their use by organizations. Even with the use of computers, it is still important to stress that the staff administering the tests and using the results need to be professionally trained.

Because of the popularity of the MMPI, new scales are constantly being devised and tested. Several attempts have been made to use the MMPI to identify child abusers and pedophiles.

The problem, to date, with attempts to use the MMPI to identify child abusers is that researchers have been unable to derive a specific profile for these individuals. As reported by Yanagida and Ching, "a predominate MMPI profile did not emerge for abuser groups relative to other comparison groups." In other words, the MMPI cannot specifically identify child abusers. Nonetheless, at least one youth-serving organization was forced by its insurance carrier to use the MMPI for screening applicants to identify possible pedophiles.

The Big Brothers/Big Sisters of America reports that some of their chapters use the MMPI to assist with the matches made between adults and children. Use for this purpose appears to aid the quality of the relationship and the ability to maintain that relationship over a sustained period of time.

Sixteen Personality Factor Questionnaire (16 PF)

The 16 PF is similar to the MMPI in that it is a "projective, personality test." It was not designed to identify child molesters or other categories of individuals ordinarily the target of screening efforts and its use for that purpose has not been validated. It is used by some mentoring programs to assist with their matching adult mentors with child mentees.

Milner's Child Abuse Potential Inventory (CAP)

The Child Abuse Potential Inventory (CAP) is a self-administered screening device which measures factors such as distress, rigidity, problems with child, problems with family, problems with others, unhappiness, and loneliness. The CAP, developed by Dr. Joel Milner, contains 160 items to which respondents either agree or disagree. Seventy-seven of the statements constitute the abuse scale. The CAP is computer scored and interpreted, thereby making it easier to administer; however, individuals administering the CAP should have training to ensure proper use.

The CAP is intended to measure the potential for physical abuse. It is not intended nor recommended for attempting to measure the potential for other forms of abuse. The

CAP has been used to screen childcare workers with some success, but the developer cautions against using the CAP as a sole measure for making a selection decision. The results of the CAP should be used in conjunction with other sources of information when used in applicant screening (Milner, 1989).

Abel Screen

According to its developer, Dr. Gene Abel, the Abel Screen is a recently developed assessment instrument for identification of pedophiles. In its current version, its creator states that it is 97% effective in identifying males with a sexual preference for boys under 13 years of age (Abel, et al, 1994). It may also identify *hebophiles*, adults who are sexually aroused by adolescent children. A version designed to identify men who target young girls is being developed.

The Abel Screen takes 90 minutes to administer and involves a question and answer test and then looking at a computer screen with slides of boys and girls, men and women in various stages of dress and undress. While viewing the slides, an unobtrusive physiological measurement is being made, purportedly without the subject's knowledge.

The Abel Screen may very well represent a significant breakthrough in the ability to screen individuals with sexual desires for children. However, no independent verification of its reliability or validity has been made. In order for the Abel Screen to be more widely accepted, it will be necessary for other psychologists and researchers to replicate the studies of Dr. Abel and his colleagues. Currently, the only individuals authorized to administer the Screen are the staff of the Behavioral Medicine Institute where the Screen was developed.

ELECTRO-MECHANICAL DEVICES

Some researchers have attempted to identify pedophiles and other undesirable individuals through the use of machines. These machines include plethysmographs, polygraphs and psychological stress evaluators (PSE). The use of any of these devices for screening applicants for staff positions is questionable for a variety of legal and practical reasons.

Plethysmographs

A *plethysmograph* is a device that measures the changes in volume of a part of the body due to variations in the blood supply. A *penile plethysmograph* is used to measure changes in penis volume during sexual arousal. The data gathered from this kind of measurement is called *phallometric* data. Abel and other researchers have found phallometric data useful in treatment of male sexual offenders. Abel uses penile plethysmography to confirm the results of the Abel Screen for individuals who appear to be high risk for pedophilia. Some researchers have attempted to use plethysmography to identify male pedophiles. Due to the invasiveness of the procedure and the high degree of skill required by those administering plethysmographic assessments, its use for screening applicants for sexual aggression and child molestation is impractical.

Polygraphs

Any discussion of personnel screening techniques should at least touch on the sub-

ject of polygraphs or "lie detectors." These machines detect changes in body functions during interviews. Polygraphs measure respiration, pulse, and galvanic skin response (the ability of the skin to conduct electricity) and actually indicate the body's stress levels rather than truthfulness. Polygraph operators need to be trained and certified in interviewing and interpreting the paper recording generated by the machine. The *Employee Polygraph Protection Act of 1988* prohibits the use of polygraphs in employee selection (see Chapter 9, "Even bad apples have rights," for additional discussion). Their use for screening volunteers is discouraged for many of the same reasons that prompted enactment of the federal law.

Psychological Stress Evaluators

Psychological Stress Evaluators (PSEs) are devices that measure the minute variations in voice frequencies caused by stress. The devices are easier to use than polygraphs as there are no physical contacts required with the subjects, who in many cases will not know that their responses are being monitored.

The PSE can accurately detect changes in voice patterns, however, it cannot ascribe the changes to deceptiveness or falsehoods. Thus, an expert must interpret the results. The quality and sensitivity of the equipment also may vary, affecting the accuracy of results.

Other screening techniques tools

1. Record of Road Test, American Red Cross

NOTE: The forms in this book are for illustrative purposes only. They are based on forms that have been used in the field. They provide "real life" examples, rather than a recommended practice.

The authoring organizations provided forms that they had designed for specific uses. The forms may not be appropriate, or complete, for other purposes or types of organizations. Copying the material may also be restricted by copyright laws.

Record of Road Test

Driver's Name _____ Date of Birth _____ Date of Test _____

Address _____

Year and Make of Vehicle _____ Plate No. _____ Vehicle No. _____

☐ License Attached License No. _____ ☐ Passed ☐ Failed

REASONS FOR FAILURE IN ROAD TEST:

Grounds for Immediate Failure:

☐ Accident ☐ Dangerous Action ☐ Serious Violation ☐ 2 Ten Point Items

Reason _____

Miscellaneous Graded Reasons (More than 20 points circled below)

A. Leaving Curb

Fails to observe a signal on time or adequately	5
Uses mirror only	3

B. Backing

Doesn't look back as well as use mirrors	5
Fails to signal	5
Excessive speed and improper directions	5

C. Parking

Takes too many pull-ups	5
Hits curb	5
Parks too far from curb	3

D. Slowing and Stopping

Stops and restarts rolling back with standard shift	5
Improper use of brakes on grades	5
Fails to use mirrors to check traffic to rear	5
Stops suddenly	5
Doesn't stop before crossing sidewalk when coming out of driveway or alley	3
Fails to stop clear of pedestrian crosswalks	5

E. Traffic Driving

1. Turning and Intersections	
Fails to get in proper lane well in advance	5
Fails to signal well in advance	5
Doesn't check traffic conditions and turns in front of traffic	10
Swings wide or cuts short while turning	3
Fails to check for cross traffic regardless of traffic controls	5
Doesn't yield right-of-way to pedestrian	10
2. Traffic Signs and Signals	
Does not approach signal prepared to stop if necessary	5
Violates traffic signal	10
Runs yellow light	10
Starts up too fast or too slow on green	5
Fails to notice or heed traffic signals	5

(continued)

3. Passing	
Runs "Stop" signs	10
Passes with insufficient clear space ahead	10
Passes in unsafe location: hill, curve, intersection	10
Fails to signal change of lanes	5
Fails to warn driver being passed	5
Pulls out and back—uncertain	5
Tailgates waiting chance to pass	5
Cuts in too short returning to right lane	10

F. General Driving Ability and Habits

Repeated stalling	5
Poor engine control	5
Poor steering control	5
Nervous, apprehensive	5
Easily angered and complains too much	5
Poor reaction to emergencies	10
Speed excessive for traffic or weather conditions	10



Even bad apples have rights

As noted in Chapter 2, screening is subject to two general sets of legal rules: one pertaining to your responsibility for screening thoroughly enough and the other to the rights of individuals being screened. This chapter discusses potential limitations on the screening process to protect applicants' rights.

You owe legal duties to the applicants themselves. Each applicant, whether seeking a paid or volunteer position, is entitled to privacy and to fair treatment under the law. The United States Constitution mandates that "public" entities protect certain privacy and liberty interests. Common law and various statutes impose similar obligations on private entities do the same.

While reading this chapter, it is important to keep in mind that the law is highly variable. One reason is that the law varies from state to state. For example, in one state it might be unlawful to review arrest records, because "second-chances" and confidentiality are of the utmost importance. In other states, you may be required to review such records because full disclosure of past conduct is the top priority. This *Tool Kit* covers the general considerations, but it does not compile all the applicable requirements.

Moreover, the law is constantly evolving, both through legislative enactment and judicial opinions, and you must change with it. From the previous example, the states where "second-chances" have been a top priority may join the trend toward open records. Screening procedures that are adequate today may be inadequate when the law changes.

While some statutory restrictions are tied to an employment relationship, the law may be flexible enough to include volunteers under certain circumstances. State laws may extend to volunteers, and substantial volunteer benefits may constitute sufficient "compensation" to define a relationship as one of employment. Moreover, given your mission to help, rather than hurt, society, you are obligated to treat applicants fairly and with respect, regardless of the nature of their position. Doing so is likely to advance your mission and foster good will with the community.

Selection should be based on an applicant as an individual.

SCREEN BASED UPON EACH APPLICANT'S SKILLS AND QUALIFICATIONS

Federal law generally prohibits your organization from screening out applicants for paid staff positions based upon their race, color, religion, sex, national origin, age, or disability. (There is a list of federal statutes at the end of the chapter.) In some jurisdictions, you may not screen out applicants based upon sexual orientation or other characteristics. While sometimes exceptions are made (e.g., for religious organizations where religious beliefs are a prerequisite), employees are to be considered on the basis of their skill and capacity, and not on the basis of any group characteristics.

Who Is an Employee?

Because many statutes protect only "employees," it is important to understand the principal factors behind this term. In summary, employees have the following traits:

1. they exchange services for some type of compensation, e.g. wages or room, board, and support;
2. they perform services that benefit the organization, and are supervised and controlled in their performance.

Such statutes were designed to protect workers' ability to support themselves. The necessity of paid employment makes employees more vulnerable than volunteers. Unlike a volunteer who can just leave, the employee cannot avoid the situation without economic consequences.

However, notwithstanding the lack of wages, the volunteer/employee distinction may become blurred. One court held that it was possible to consider a volunteer firefighter to be an "employee" due to the membership benefits available to volunteers, but did not find the firefighter to be an "employee" in that case. Moreover, some civil rights laws give volunteers protection similar to that of employees.

For your information, there are several guidebooks listed at the end of the book that concern employment practices and prohibitions. For additional information concerning the discrimination laws, you may contact the Equal Employment Opportunity Commission at 1-800-669-EEOC.

Not only is it forbidden to specifically screen out a statutorily protected group, the laws also forbid seemingly neutral criteria that have the same effect. If a selection criterion disparately affects a statutorily protected group, your organization must prove that such criterion is sufficiently important for job performance to justify its use.

A height requirement of 6'0" would exclude more women than men. Such a rule is improper unless necessary for adequate job performance.

An automatic rejection of individuals with arrest records may eliminate some minority groups at a higher rate than others. Such an automatic result from a single screening tool may be found to unlawfully discriminate absent a legitimate "business" justification.

In addition to having an attorney review your policies and practices, you may want to consider the following questions when assessing your risk of liability.

- ✓ Do you state that your organization has a nondiscriminatory policy when you advertise for a position?
- ✓ Have you taken steps to educate the existing staff of this policy?

- ✓ Do you solicit applicants from the general public or do you limit your advertisements to areas dominated by one ethnic group or religion?
- ✓ Have you reviewed the job qualifications to ensure that each requirement is absolutely necessary for the position at hand?
- ✓ Do you "screen" each interviewer? Do the interviewers use offensive phrases or words like "those people," "your kind," "jewed them down," or "honey?"
- ✓ Do you submit each applicant to an identical selection process? If not, is there a legitimate justification to treat applicants differently? Would you be ashamed to state this reason in court?
- ✓ With respect to testing in general, how valid are the results? Will similar results disqualify one applicant but not another? Even if the applicants are treated consistently on the basis of the results, does the test tend to screen out a particular group?

PRIVACY LIMITATIONS

Everyone has a general right to be left alone, and to be free from unwarranted intrusion. The law protects an individual's interest in privacy—both by limiting tests that may reveal private information, and by permitting lawsuits to compensate for any wrongful intrusion. Your failure to respect such privacy rights may result in litigation.

An individual's right to privacy is not absolute, however; it can be invaded if there is a legitimate reason to do so or with the applicant's consent. As a general matter, any tool that invades another's privacy should be carefully considered, gingerly implemented, and narrowly focused on a legitimate "business" purpose (e.g., public safety interest). The tool should be used in the least oppressive environment possible, and monitored by a legal specialist. The information should not be available through other means, and the results should be kept confidential.

The use of some tools may be almost impossible to justify. Absent a clear need and written approval from your attorney, neither you nor your organization should eavesdrop on private conversations, plant phone taps, open private mail, look at private bank accounts, or peep into windows. When balancing the privacy right against the need for these investigatory tools, the privacy right almost always wins out.

Federal and state laws prohibit the use of some screening tools that inappropriately invade applicants' privacy.

Other tools are closely regulated by statute to protect privacy interests. For example, federal law bans pre-employment polygraph tests for employees, and limits post-employment testing to ongoing investigations concerning economic loss to the private workplace (e.g., embezzlement). The law provides certain safeguards when such tests are used, and permits an individual to sue for violations.

Likewise, federal law protects individuals' right to keep their finances private. In an effort to balance the needs of commerce against the privacy concerns of individuals, receipt of a credit report is limited to people or entities with a legitimate reason to review it. Both criminal and civil liability may result from a knowingly obtaining a credit report for an impermissible purpose. For example, a financial officer has a legitimate reason to request credit reports for applicants who will handle large sums of money.

However, she can not obtain such a report through her position to gather ammunition for an upcoming child custody dispute. Should the financial officer do so, the organization may be liable.

Each applicant retains a privacy right concerning information about him/herself, even though the information was once contained in a public record. While a criminal history consists of a compilation of public judicial records, and many organizations have compelling safety reason to justify their use, the law regulates the release and use of such information. The National Child Protection Act, discussed elsewhere in this book, encourages each state to require criminal background checks as a screening tool, and offers certain immunities to organizations who use this tool. In some circumstances, though, liability can result from calling public attention to an old record.



Take Note!!

Public Entities

Public entities are bound by certain constitutional restraints that protect citizens from unlawful governmental conduct: unlawful search and seizures, wrongful invasions of privacy, and deprivation of liberty. Many "scientific" tests may be unlawful on all three counts, but if a public entity has compelling justification for the test, and if the test does not exceed the boundaries of clearly established statutory or constitutional rights, it may be immune from suit. As noted previously, the public/private distinction is quite often blurred, so private entities may have similar restraints. Also, federal and state statutes and common law impose comparable restraints. Because of the intricacy of the "scientific" testing methods and the variance in the law, it is important to consult with a legal specialist in this area before you implement any such screening devices.

Some screening tools are based, or purportedly based, upon scientific principles. Urinalysis, blood, psychological, or physical strength tests are examples of such screening tools. While these tools may accurately detect a hazardous condition, use of such tools can raise serious privacy concerns. The tools may be invasive both because of how the test is administered, and because of the sensitive facts that may be disclosed. For example, if urinalysis is an effective test for drug use, and such a test is necessary to ensure that a school group is not endangered by an impaired bus driver, is it necessary to have five people of the opposite sex watch the sample taking? If it is a blood test for the purpose of detecting drug use, is it necessary to also run an AIDS test "while you are at it?"

Consent

If any tool that invades another's privacy must be used, obtaining the applicant's consent is advisable. However, consent has its limitations. For example, juveniles cannot legally consent, though their parents and/or guardian can generally act on their behalf.

Consent is also limited by the scope of disclosure concerning the nature of the intrusion. If the disclosure did not fully apprise the applicant of the risks, consent will not be

a defense if litigation should arise. In addition, consent is no defense if the screening tool is not used as authorized, or if the invasion is greater than originally anticipated.

Also, consent to an invasion of privacy does not protect you if the resulting information is inadvertently released to unauthorized recipients. Consent to use the tool for a specific purpose does not include public release of such private information, absent the applicant's specific consent to publish the results.

Protecting Privacy

If your organization is planning to implement a screening tool that may invade an applicant's privacy, it would be advisable to do the following.

- ✓ Retain an attorney to review the federal and state requirements of, and limitations to, use of the tool.
- ✓ Outline acceptable screening tools, and set up policies to ensure that unacceptable tools are not used. For example, your policies should prevent the use of a psychological test as a pretext for a "fishing expedition" into a fifty-year old "hippie" because the interviewer is interested in his lifestyle.
- ✓ Define the specific need that justifies the use of the tool, and the acceptable scope of the test.
- ✓ Educate your staff about the appropriate use of such tools.
- ✓ Set up an approval process to ensure that the use is necessary and tailored to meet the organization's needs.
- ✓ Try to anticipate any improper way that a screening tool can be used, and construct barriers to prevent such abuse.
- ✓ Describe the screening tool, and its attendant safeguards, to applicants, and obtain their consent.
- ✓ Maintain a file of signed consent forms to protect your organization should an applicant sue.

DEFAMATION AND CONFIDENTIALITY

Everyone has a right to protect their reputations from falsehoods, and their private lives from public scrutiny. Even if your organization has a legitimate need for sensitive information, inaccurate recording or release of that information is likely to result in a lawsuit.

The truthfulness of any statement that your organization, or its staff, may make to another, whether written (libel) or spoken (slander), can be challenged in court if it damages someone's reputation. If the statement is false, and not mere opinion, your organization may be liable for defamation.

Disclosure of inaccurate or sensitive records can lead to liability.

Public statements of a private matter, even if the statements are truthful, may also lead to liability if the matter does not concern a "legitimate" public issue. However, "legitimate" public issues do not encompass everything that is of

interest to the public. For example, the public may be interested in the prevalence of AIDS in the community, but this interest alone will probably not justify the dissemination of an applicant's blood test results that indicate her infection with the disease.

Thus, to avoid lawsuits your organization should consider the following.

- ✓ Create policies that ensure the confidentiality of any applicant information, and prevent disclosure to anyone without a need to know.
- ✓ Never release the resulting information to people who have no need to see it and limit the circle of people who discuss the issue.
- ✓ Keep all discussions focused on the needs of the organization and the applicant's suitability for the particular position.
- ✓ Ensure that only truthful information is factored into the analysis, and that all information remains confidential.
- ✓ Instruct your staff and volunteers not to discuss personnel issues outside the office.
- ✓ Keep rejection letters brief. If you must state a specific reason for rejection, other than a general "we cannot use your services at this time," stick to objective facts.

CONCLUSION

Each applicant is entitled to privacy and to fair treatment within the law. The courts require your organization to focus on the applicant's skills and to respect the applicant's privacy—both in the tools that you use and in the dissemination of any information obtained. Failure to respect such rights may result in litigation as well as public outrage.

CASE LAW

Big Brothers, Inc. v. Minneapolis Comm'n on Civil Rights, 284 N.W.2d 823 (Minn. 1979) (unlawful to discriminate on sexual preference but mere notification of family that potential mentor is a homosexual is not discriminatory).

Borse v. Piece Goods Shop, Inc., 963 F.2d 611, 620-21 (3d Cir. 1992) (drug testing may be invasive, both because of how the test is administered and because of the host of private medical facts that are disclosed).

Briscoe v. Reader's Digest Ass'n, 483 P.2d 34 (Cal. 1971) (plaintiff's identification as a former hijacker in connection with an article on hijacking was not newsworthy).

Brewer v. Purvis, 816 F. Supp. 1560 (M.D. Ga. 1993) (distribution of investigative report concerning grade change allegations against coach was not defamatory when given to persons with reason to review, either by duty or authority).

Brown v. Albany Citizens Council on Alcoholism, Inc., 605 N.Y.S.2d 577 (1993) (statements of opinion may be defamatory if intertwined with statements of fact).

Frederick v. Marquette Nat. Bank, 911 F.2d 1 (7th Cir. 1990) (credit checks proper where there is legitimate need).

Dresbach v. Doubleday & Co., Inc., 518 F. Supp. 1285 (D.D.C. 1981) (passage of time may make a subject private, even though once it had been a matter of legitimate public interest).

Geary v. United States Steel Corp., 319 A.2d 174 (Pa. 1974) ("there are some areas of an employee's life in which his employer has no legitimate interest").

Graves v. Women's Professional Rodeo Ass'n, 907 F.2d 71 (8th Cir. 1990) (promulgating regulations, approving rodeo competitions, imposing membership obligations, advancing entry fees, and recognizing champions do not create an employment relationship; an exchange of compensation for services is central to the idea of employment).

Grossman v. Smart, 807 F. Supp. 1404 (C.D. Ill. 1992) (discussing legitimacy of University's employment practices as a matter of public concern and recovery under common law).

Hall v. Delaware Council on Crime and Justice, 780 F. Supp. 241 (D.Del.), *aff'd*, 975 F.2d 1549 (3d Cir. 1992) (reimbursement of work-related expenses and free admittance to an annual luncheon insufficient remuneration to consider volunteers as employees).

Haavistola v. Community Fire Co. of Rising Sun, 6 F.3d 211 (4th Cir. 1993) (volunteers may be construed to be "employees" under certain circumstances).

Hester v. City of Milledgeville, 777 F.2d 1492 (11th Cir. 1986) (polygraph testing of firefighters upheld where illegal drug activity was a concern and the testing was specifically directed at such activity; test results also were not the sole basis for disciplinary action).

Little v. Wuerl, 929 F.2d 944 (3d Cir. 1991) (Catholic school not prohibited from terminating non-Catholic teacher under Title VII).

O'Brien v. Papa Gino's of America, Inc., 780 F.2d 1067 (1st Cir. 1986) (jury found employee pressured into a highly offensive polygraph test).

Paul v. Davis, 424 U.S. 693 (1976) (privacy rights not absolute, release of "public records" may be permitted).

Smith v. Greyhound Lines, Inc., 614 F. Supp. 558 (W.D. Penn. 1984), aff'd, 800 F.2d 1139 (3d Cir. 1986) (state law protects only at-will employees from polygraph tests; union employees protected by collective bargaining agreement have other remedies; unsubstantiated rumors that do not come from an official source are not defamatory).

Smith v. Berks Community Television, 657 F. Supp. 794 (E.D. Pa. 1987) (volunteers who receive no fringe benefits or reimbursement for expenses are not protected by the statutes prohibiting discrimination).

Speer v. Ohio Dept. of Rehab. & Correction, 624 N.E.2d 251 (Ohio.App. 1993) (visual surveillance from bathroom ceiling exceeded boundaries of consent to search form).

Thorne v. City of El Segundo, 802 F.2d 1131 (8th Cir. 1986) (discretionary governmental decisions are immune from suit if they do not violate clearly established statutory or constitutional rights).

United States Department of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749 (1989) (an individual has a privacy interest in his "rap" sheet, and this interest outweighed a journalist's story about a congressman's involvement with a crime family).

Walker v. Grand Central Sanitation, Inc., 634 A.2d 237 (Pa. Super. 1993) (former employer's statements of opinion to prospective employer were not defamatory).

Wards Cove Packing Co. v. Atonio, 490 U.S. 642 (1989) (business justification to discriminate requires legitimate non-biased reason for business practice).

Wefel v. Rockwood R-6 School District, 779 F. Supp. 468 (E.D. Mo. 1991) (letter in personnel file that characterized the plaintiff as a "liar and a fake" does not violate rights when state law and district policy prevent disclosure).

Wolf v. Regardie, 553 A.2d 1213 (D.C.App. 1989) (article written from review of public records does not invade an individual's privacy).

Yohay v. City of Alexandria Employees Credit Union, 827 F.2d 967 (4th Cir. 1987) (both attorney and credit union can be liable for credit report obtained under false pretenses).

RELEVANT FEDERAL STATUTES

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et. seq.*, prohibits discrimination based on race, color, religion, sex, or national origin.

The Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 *et. seq.*, prohibits discrimination based upon age.

The Federal Public Accommodations Law, 42 U.S.C. § 2000a, mandates that places of public accommodation must be open to everyone without discrimination or segregation on the ground of race, color, religion, or national origin.

The Americans with Disabilities Act, 42 U.S.C. § 2501 *et. seq.*, prohibits discrimination against individuals with disabilities, and requires employers to make reasonable accommodation for workers with disabilities.

Employee Polygraph Protection Act, 29 U.S.C. § 2001 *et. seq.*, bans the use of lie detectors in the workplace unless there is an ongoing investigation into an economic loss, and there is a reasonable suspicion that the individual being tested was involved.

Privacy Act/Freedom of Information Act, 5 U.S.C. § 552a *et. seq.*, balances the public's right to access governmental information against the privacy rights of the individuals involved.

Fair Credit Reporting Act, 15 U.S.C. § 1681b *et. seq.*, regulates access to an individual's credit history.



Using this *Tool Kit*

In the previous chapters, we have discussed each element of the staff screening process—position descriptions, applications, interviews, reference checks, record checks, and other screening techniques. In this chapter, we will show you how to put this process to work for your organization.

You need to remember that this is not a comprehensive employee selection handbook. Whether operating with all paid staff, all volunteers or a combination of both, every community-serving organization must attempt to select staff who possess the skills necessary to perform the responsibilities listed in their position descriptions. The purpose of this *Tool Kit* is to provide effective applicant screening strategies for community-serving organizations. The goal here is to exclude applicants who constitute an unacceptable risk to service recipients, organizational assets or themselves.

In the earlier chapters we provided samples of various forms and screening tools used by community-serving organizations. In this section we will guide you through a process to help you construct your own forms and develop your own procedures. To accomplish this we will pose a series of questions. Your answers will provide the basis for developing your screening process.

DEVELOPING POSITION DESCRIPTIONS

Position descriptions are an important part of the staff screening process. The position description spells out the requirements of the job and is the basis for identification of possible risks associated with that specific position. The position description provides the justification for information to be collected in each subsequent phase of staff screening.

- ◆ What is the title of the position for which you are screening?
- ◆ What purpose is the position going to serve? Why will it exist?
- ◆ What are the specific responsibilities for the position? What limitations are placed on performing these functions?
- ◆ What qualifications or skills must the person holding the position have? How are these qualifications related to the specific functions or responsibilities? Are they reasonable or discriminatory?
- ◆ Who will the individual report to?
- ◆ What is the minimum amount of time required by the position? What is the maximum amount of time permitted?

- ◆ What training will be provided to the individual selected for this position? Will participation in the training be a prerequisite to assuming the position?
- ◆ Where will the services be performed?

DEVELOPING THE APPLICATION

The first step in preparing the application form is to review the position description. You need to ask, "Are there any inherent risks related to specific responsibilities?" If so, how will these risks be assessed in the application?

An application should generally encompass five areas based upon the requirements stated in the position description: Identification, Qualifications, Experience, Background, and Consent/Waiver.

Identification

- ◆ What information do you need in order to adequately identify the individual?
- ◆ Do you need a date of birth or will a minimum age be sufficient?
- ◆ Do you request the current address as well as past addresses for a period of five years?

Qualifications

- ◆ What do you need to ask about specific *skills* the applicant may bring to the position?
- ◆ Is the applicant's educational achievement relevant to the needs of the position?
- ◆ Do you need to know about the applicant's driving skills?
- ◆ Is possessing *certificates* such as Life Saving or Swimming Instructor relevant to the position? Are any *professional licenses* required?

Experience

- ◆ What experience could an applicant have that might be relevant to inquiry on the application form?
- ◆ What information do you need to have to verify the experience? Are you requesting the name, telephone number and address of the immediate supervisor for both paid and volunteer positions?
- ◆ Does the application request information about employment for the past five years with terms of service for each position?

Background

- ◆ Is the nature of the position sufficiently sensitive to require criminal history information? If yes, how will you ask about the applicant's possible criminal history records?

- ◆ Do you need to ask the applicant to provide personal references in addition to past (and present) employment or volunteer work?
- ◆ Are there other factors related to the nature of the position which need to be subject to inquiry on the application?
- ◆ Are you requesting any information in violation of employment or anti-discrimination laws—e.g., gender, race or ethnicity, age, religion, country of national origin, sexual orientation? If you are requesting any of this information can you justify it based on the requirements of the position—in other words are you requesting information on a *bona fide occupational qualification*?

Consent/Waiver

To verify the information you collect on the application, you should have the applicant sign a consent statement authorizing the organization to initiate the necessary contacts. This statement should also explicitly waive the applicant's rights to confidentiality of the information.

- ◆ How do you intend to check references and/or verify employment and experience?
- ◆ Does the consent/waiver statement ask explicit authorization for each kind of background check that will be conducted? References? Employers? Volunteer service records? Criminal history records? Driving records? Credit bureau records? Educational and professional credentials?
- ◆ Has a lawyer reviewed the consent/waiver statement?

DEVELOPING INTERVIEW GUIDES

When preparing to perform interviews, you should examine the position descriptions as well as the applications. Prepare a script with questions for the interview. The following questions may help you construct your script. For specific suggestions for questions to ask during the interview, see Chapter 5.

Application Information Discussion

- ◆ Are there items on the application that appear to need clarification? If there are, what do you need to ask about: frequent moves? gaps in employment? adverse criminal history information?
- ◆ What additional information do you need to know about the experience listed on the application?
- ◆ Do you need to know additional information about the qualifications listed on the application? If the applicant holds a certificate, when does it expire; what training was necessary to qualify for the certificate; and, what kind of test did the applicant take to qualify for the certificate or license?
- ◆ What do you need to know about the relationship of the references to the applicant? Do they really know the applicant well enough to be of value?

Other Interview Areas

- ◆ What specific risks are inherent in the position and what do you need to know about the applicant relative to these risks? Does the interview guide contain questions about these areas?
- ◆ Is there any information that you need to give the applicant about your organization—policies or procedures? expectations? safeguards? Do you have an organizational fact sheet or other information that you routinely give to applicants?

Home Visits

Home visits are a specific kind of interview for which preparation needs to be made. In the check list for a home visit, you should consider the following:

- ◆ Are the objectives of the visit clearly understood?
- ◆ Are all individuals over 13 years of age and who live in the home going to be interviewed?
- ◆ Are the relationships with the applicant clearly identified, e.g., girl friend, sibling, child, etc.?
- ◆ Are environmental factors being assessed also, e.g., cleanliness, condition, accessibility?

DEVELOPING REFERENCE CHECK GUIDES

When performing reference checks, you may find that developing a worksheet or script is helpful to ensure that you seek uniform information on applicants from each of their references.

Identification Protocol

- ◆ Do you identify yourself in a manner that leads the reference to understand that the inquiry is legitimate, with the full knowledge of the applicant?
- ◆ Do you obtain verification of the identity of the reference?

Validation of Information from Application

- ◆ Do you verify the information provided by the applicant through use of open-ended questions?
- ◆ Do you verify the nature of the relationship between the applicant and the reference?
- ◆ Do you probe the reference for information regarding work habits and demeanor with others?
- ◆ Do you specifically ask if the applicant would be welcome to return to his or her old position?

Determining Suitability for Working with Vulnerable Individuals

- ◆ Do you ask for any information the reference has that would indicate the applicant's strengths or weaknesses to work with your specific population of service recipients?
- ◆ Do you ask if the reference ever personally observed the applicant at work with service recipients?
- ◆ Do you request specific examples that could support the reference's appraisal of the applicant's abilities?

CONDUCTING RECORD CHECKS

If you use record checks as part of your screening procedures, here are some questions that may guide your selection and utilization of records to be checked.

- ◆ Have you received permission from the applicants to examine their records — specifically by type of record?
- ◆ If there is a fee for checking the records, who will pay?

Driving Records

- ◆ Does the position for which you are screening applicants entail operating a motor vehicle as a regular and significant position responsibility?
- ◆ Do you have written criteria for assessing an applicant's suitability to operate a vehicle for your organization?
- ◆ Will your organization's insurance company check driving records of both paid and volunteer drivers?

Criminal History Records

- ◆ Does your state have laws authorizing access to criminal history records for applicant screening?
- ◆ Are you using fingerprints for positive identification (as required for a national record check through the FBI)?

Child Abuse Registries

- ◆ Can your state's child abuse registry be accessed by your organization for applicant screening?

Credit Bureau Records

- ◆ Does the position require collecting or disbursing funds or other aspects of financial responsibility, thereby making credit bureau records relevant?

USING OTHER SCREENING TECHNIQUES

If you use drug and alcohol screening, psychological testing, or other screening techniques, the following questions may be helpful to you.

- ◆ Are the techniques you propose legal?

- ◆ Does your organization have written policies about their use and criteria for decision making based on the results?
- ◆ Has the organization made sufficient provisions to ensure the confidentiality of test results?

Drug and Alcohol Screening

- ◆ Are there specific responsibilities listed in the position description which constitute unacceptable risks without screening for drug or alcohol abuse?
- ◆ Does the position permit access to controlled substances?
- ◆ Does the position entail operating motor vehicles or other potentially dangerous machinery?
- ◆ Does the individual have a history of drug or alcohol abuse?

Psychological Tests

- ◆ What specific factor do you want to measure?
- ◆ Is there a valid and reliable psychological test for measuring the attributes you need to have measured?
- ◆ Does the organization have access to individuals qualified to administer the tests and interpret their results?

Epilogue



In this *Tool Kit*, we have introduced an approach to screening applicants for sensitive positions in your organization. Even the most thorough screening process, though, will not keep all of the "bad apples" out of your organization. For evidence of this all we need to do is to look at the recent case of Aldrich Ames, a CIA official who was subjected to one of the most thorough screening processes used by the federal government. His screening process involved *every* category of tool discussed in this *Tool Kit*, and, years after he was selected, he was discovered to be a spy for another country. We need to be sure that the lesson of the CIA case is not lost to us.

The lesson we must learn is that screening by itself is not sufficient. Community-serving organizations may screen their applicants extremely well and yet be vulnerable to the occasional "bad apple" who avoids detection. Community-serving organizations have a responsibility to monitor and supervise the activities of their staffs. In addition, when "bad apples" are detected, organizations have the duty to discharge them in order to protect their service recipients and organizational assets.

In some cases, such as child abuse, merely discharging the individual is not sufficient. You may be required by law to report suspected child abuse to a law enforcement or child protective services agency.

To help organizations which provide services to children and youth, the Nonprofit Risk Management Center is preparing a child abuse prevention primer. This will be a guidebook that builds upon the information in the *Tool Kit* and will provide "how to" information and guidance for reducing the risk of children being abused in their programs. It will also provide suggestions for fulfilling the organization's monitoring and supervisory responsibilities. We hope that this new publication, plus the items and organizations listed in the "Resources" section, will give you the guidance you need to control your staff-related risks.

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Resources

The following sources of publications and other materials may have information your organization could use in developing its screening procedures.

Applied Research and Development Institute (ARDI)
1805 S. Bellaire St., Suite 219
Denver CO 80222
303-691-6076

ARDI publishes a catalogue, *Management and Leadership Resources for Nonprofits*, which includes materials from many nonprofit management resources.

Aspen Publishers, Inc.
7201 McKinney Circle
Frederick, MD 21701
800-638-8437

Publishes the *Nonprofit Volunteer Management Manual* with a companion forms diskette. Also publishes the *Nonprofit Personnel Policies Manual*.

Energize
5450 Wissahickon Ave.
Philadelphia, PA 19144
800-395-9800

Energize is an international training, consulting and publishing firm specializing in volunteerism. Publications and other materials concerning all facets of volunteer programs are listed in their *Volunteer Energy Resource Catalogue* available free of charge.

Forensic Mental Health Services of Connecticut
190 Governor Winthrop Blvd.
New London, CT 06320

Publishes *Interview/Screening Guidelines* originally developed for Big Brothers/Big Sisters of Worcester County, Massachusetts. Guidelines are useful for screening applicants to work in children's programs.

National Council of Nonprofit Associations (NCNA)
1001 Connecticut Ave, N.W., Suite 900
Washington, D.C. 20036
202-833-5740

The National Council of Nonprofit Associations supports a network of 27 state associations of nonprofit organizations. Member associations offer training, publications, and technical assistance. Contact NCNA for information about your state nonprofit association.

Points of Light Foundation
P.O. Box 221586
Chantilly, VA 22022
800-272-8306

The *Volunteer Community Service Catalogue* offers a large collection of publications, videos, and other tools for volunteer programs. Call or write for your free copy.

Society For Nonprofit Organizations
6314 Odana Rd., Suite 1
Madison, WI 53719
800-424-7367

Provides training and publications about nonprofit organization, operation, and management. Call or write for a free copy of their catalogue.

Support Centers of America
70 10th Street, Suite 201
San Francisco, CA 93103-1302
415-552-7600

Support Centers of America provides technical assistance and training for nonprofit organizations from a network of regional centers located throughout the country.

United Way of America
701 N. Fairfax St.
Alexandria, Virginia 22314-7840
703-836-7100

United Way of America offers a variety of resources for management of nonprofit organizations. Nonprofit management resources are available through local United Way affiliates, several of which include "volunteer centers" created to encourage utilization of volunteers to provide community services.

Resources from the Nonprofit Risk Management Center

Am I Covered for...?: A Guide to Insurance for Non-Profits (2d ed.), by Terry S. Chapman, Mary L. Lai & Elmer L. Steinbock, 285 pages, \$15.00. The most complete and up-to-date handbook on insurance purchasing for nonprofits.

D & O—Yes or No? 20 pages, \$6.00. This booklet examines the major considerations for deciding whether to purchase directors and officers insurance and, if so, which policy to select.

Guidebook for Directors of Nonprofit Corporations, 1992, 118 pages, \$19.95. A layperson's guide from the American Bar Association for every board that wants to protect itself from lawsuits.

Insurance Assurance for Volunteers, 1994, 16 pages, \$5.00. This booklet explains insurance coverage for claims against and injuries to volunteers (as distinct from insurance for claims against the organization for volunteers' actions). The types of coverage discussed are General Liability, Accident and Injury Policies, Auto Liability, and Directors and Officers Insurance.

Managing Legal Liability and Insurance for Corporate Volunteer Programs, 1992, 30 pages, \$10.00. This book provides the guidance on liability and insurance corporations need when they become involved with volunteer programs. Whether operating a project directly or recruiting volunteers for a community program, every corporate sponsor can find answers in this book. Also useful for nonprofits that collaborate with businesses.

No Surprises: Controlling Risks in Volunteer Programs, by Charles Tremper & Gwynne Kostin, 1993, 60 pages, \$9.95. This practical handbook offers strategies for protecting the organization, its staff, and the community it serves from injuries, lawsuits, and other unpleasant surprises.

State Liability Laws for Charitable Organizations and Volunteers, 1993, 48 pages, \$12.50. A state-by-state compilation of volunteer protection laws and limitations on the liability of charitable organizations.

Staff Screening Tool Kit: Keeping the Bad Apples Out of Your Organization, 1994. Additional copies \$15.00.

Quantity discounts available.

To order, please include \$3.00 shipping and handling for the first item plus \$.50 for each additional item, \$6.00 maximum. Send order and payment or purchase order (no credit cards please) to:

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